

June 16, 2009

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

**APPROVAL AND EXECUTION OF REVISED AMENDED AND RESTATED
LEASE NO. 6573 TO FACILITATE REDEVELOPMENT – PARCEL 27R
(JAMAICA BAY INN - 4175 ADMIRALTY WAY) - MARINA DEL REY
(FOURTH DISTRICT)
(4 VOTES)**

SUBJECT

Request for approval and execution of Amended and Restated Lease No. 6573 that extends the current lease for an additional 39 years for the Jamaica Bay Inn (Parcel 27R), incorporates a change in the lessee's ownership structure, and includes other revisions to the terms and provisions of the lease to facilitate redevelopment.

IT IS RECOMMENDED THAT YOUR BOARD:

1. Find that the Regional Planning Commission, acting on behalf of the County, has previously considered and adopted a negative declaration for the proposed redevelopment/replacement project contemplated by Amended and Restated Lease No. 6573 with respect to Parcel 27R (Jamaica Bay Inn).
2. Authorize the Chairman to execute the Amended and Restated Lease No. 6573 for Parcel 27R, attached as Exhibit A, extending the term of the existing ground lease on Parcel 27R by 39 years, approving and incorporating the restructured limited partnership of the lessee, Marina del Rey Innvestors, a California limited partnership, and incorporating other revisions to the terms and provisions of the Amended and Restated Lease to facilitate redevelopment.

3. Authorize the Chairman to execute a Memorandum of Lease that has been approved as to form by County Counsel when presented by the Director of the Department of Beaches and Harbors.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The County is the lessor of a ground lease for Parcel 27R in Marina del Rey, currently improved with a 42-room hotel (Jamaica Bay Inn). Your Board granted an Option for a lease extension for Parcel 27R on May 30, 2006 to the Parcel 27R lessee, Marina del Rey Investors, a California limited partnership ("Lessee"). The Amended and Restated Lease your Board approved upon granting of the Option needs to be revised to incorporate, most importantly, the lessee's new ownership structure and identification of the new ownership structure as the baseline for determining future transfers, as well as provisions for the dedication of a portion of the premises for the proposed Admiralty Way street widening; revision of the new construction square footage to 52,006 to conform to the final development plan; and permission for the Lessee to connect its leasehold improvements to the County storm drain system subject to certain requirements.

Marina del Rey leases provide that the County's consent is required on most lease assignments and that such consent may not be unreasonably withheld. Department policy provides that the County's approval or denial of any assignment will be based on one or more of the following: a) the financial condition of the assignee; b) the price to be paid for the leasehold as it relates to the improvements or potential development thereon; and c) the management of the leasehold by the new lessee being in the best interest of the total Marina project.

Our review has found: 1) IWF Jamaica Bay, LLC, the proposed assignee of the general partner interest, is financially sound and that its principals, Dale and Matt Marquis, are experienced hotel developers; 2) no sale of the current leasehold is involved; and 3) the leasehold will continue to be managed by the current manager, the Pacifica Hotel Company, which has been successfully managing the parcel since 1995.

The Lessee has satisfied the conditions for exercise contained in the Option and has received all planning, zoning, environmental and other entitlement approvals required to be obtained from governmental authorities for the construction of the development project. Accordingly, your Board's approval and execution of the attached Amended and Restated Lease is appropriate.

The Amended and Restated Lease calls for both the Lessee and the County to sign a memorandum of lease in recordable form following the effective date of the Lease.

Implementation of Strategic Plan Goals

The recommended action will allow the Lessee to transfer partnership interests in lessee's limited partnership to accommodate completion of an internal reorganization and investment of equity for the redevelopment work, while maintaining appropriate management of the leasehold and proactively redeveloping the leasehold improvements, which will result in fulfillment of approved Strategic Plan Goal Nos. 1 and 3, "Operational Effectiveness" and "Community and Municipal Services", respectively.

FISCAL IMPACT/FINANCING

There will be no revenue change from that previously identified when your Board approved the original Amended and Restated Lease. Briefly, as already approved, the Lessee will pay: 1) an extension fee of \$450,000, with \$100,000 having been paid in the form of the Option fee and the remaining \$350,000 to be paid in ten equal annual installments, plus interest, starting on the effective date of the Amended and Restated Lease; 2) rent increases due to construction of additional hotel rooms and the complete remodeling of the existing hotel, anticipated to rise by approximately \$176,000 annually after construction and stabilization; and 3) a maximum contribution of \$150,000, adjusted annually, towards the cost of installing new public improvements at Marina Beach (including, but not limited to, picnic facilities, restrooms and showers, playground equipment and other amenities and related costs).

Operating Budget Impact

Upon your Board's approval of the Amended and Restated Lease, the Department of Beaches and Harbors' operating budget will receive a \$350,000 extension fee, payable in ten equal annual installments of \$35,000 each, plus interest on the unpaid balance at the prime rate per annum. The \$35,000 annual revenue payment is included in the Marina Budget Unit of the Department's Fiscal Year 2009-10 Adopted Budget. The installment payments received from FY 2010-11 through FY 2018-19 will be subsequently budgeted as one-time revenue. In addition, the annual minimum rent during construction shall be reset to \$16,619 per month (75% of the previous three years' average annual rent paid to the County), which is anticipated to comprise the total rent from Parcel 27 during construction. The resulting reduction of approximately \$49,000 per year in total rent until the completion of construction is included in the Marina Budget Unit of the Department's Fiscal Year 2009-10 Adopted Budget.

Costs of consultants involved in the negotiation and development of the Option and Amended and Restated Lease are being reimbursed by the Lessee.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The term of the lease for Parcel 27R commenced on January 1, 1963 and expires on December 31, 2023. The Amended and Restated Lease extends the expiration date to December 31, 2062.

Parcel 27 contains approximately 117,270 square feet of land, which is improved with the 42-room Jamaica Bay Inn hotel with a coffee shop and the former Casa Escobar restaurant, for a total of approximately 33,207 square feet of improvements. The Amended and Restated Lease calls for the demolition of the restaurant and for the complete renovation of the existing hotel to include the addition of 69 new rooms, for a total of 111 rooms, with a smaller sized restaurant on-site. When completed, the new hotel will total approximately 73,225 square feet, which includes 21,219 square feet of renovated area.

Lessee's general partners are currently comprised of the PREG Holding Group at 45%; Somera Capital Management, LLC at 45%; and Abel Realty Co., Inc. at 10%. Concurrent with the execution of the attached Amended and Restated Lease, the existing general partners intend to assign 100% of their general partner interests to IWF Jamaica Bay, LLC, an entity wholly owned by Invest West Financial Corporation, which, in turn, is wholly owned by Dale and Matt Marquis. In connection with the assignment of their general partner interests, all of the former general partners will become limited partners. Following the partnership restructuring, IWF Jamaica Bay, LLC will own a 25% interest in Lessee as general partner and the remaining 75% interest in Lessee will be owned by the following limited partners: existing limited partners at 18.8%; PREG Holding Group at 3.1%; Somera Capital Management, LLC at 3.1%; Abel Realty Co., Inc. at .7%; and IWF Jamaica Bay L.P. at 49.2%. IWF Jamaica Bay L.P. is a new entity in which the general partner is an Invest West Financial Corporation affiliate and the limited partners of which are new limited partners each holding less than a 5% beneficial interest in Lessee, except for one limited partner, Shupe Revocable Trust, that holds a 13.1% beneficial interest.

Extension of the existing lease is authorized by Government Code Sections 25907 and 25536. The extended lease term is in conformance with the maximum 99-year period authorized by California law.

County Counsel has approved the Amended and Restated Lease as to form and will approve the Memorandum of Lease as to form prior to its presentation to the Chairman for execution by the Director of the Department of Beaches and Harbors.

ENVIRONMENTAL DOCUMENTATION

On August 15, 2007, the Regional Planning Commission considered and adopted a negative declaration for the proposed redevelopment/replacement project prior to approving the Coastal Development Permit and Conditional Use Permit for the project, concluding that the proposed project will have no significant effect on the environment. The recommended action does not raise any new or different environmental impacts.

CONTRACTING PROCESS

The Lessee's proposal for a lease extension was received in response to the release of a Board-authorized solicitation document seeking proposals for new development and redevelopment on parcels on the westside of Marina del Rey. Upon completion of successful negotiations with the Lessee, your Board approved, on May 30, 2006, an Option to Amend Lease Agreement to facilitate redevelopment and expansion of the hotel. The Option, as extended initially upon approval by the Director of the Department of Beaches and Harbors and subsequently upon approval by your Board, was exercised by Lessee on May 28, 2009.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

The execution of the Amended and Restated Lease and the Memorandum of Lease will allow construction of the redevelopment project to commence.

CONCLUSION

Please authorize the Executive Officer of the Board to send two copies of the executed Amended and Restated Lease to the Department of Beaches and Harbors.

Respectfully submitted,

Santos H. Kreimann
Director

SK:GB:ks
Attachments (1)

c: Chief Executive Officer
Acting County Counsel
Executive Officer, Board of Supervisors

**AMENDED AND RESTATED LEASE AGREEMENT
PARCEL 27R — MARINA DEL REY**

THIS AMENDED AND RESTATED LEASE AGREEMENT (“Lease”) is made and entered into as of the _____ day of _____, 2009 (“Effective Date”), by and between the COUNTY OF LOS ANGELES (“County”), as lessor, and MARINA DEL REY INVESTORS, a California limited partnership (together with its permitted successors and assigns, “Lessee”), as lessee.

WITNESSETH

WHEREAS, County and Spencer Investment Company, a California corporation, and Michael Sims, an individual (collectively, the “Original Lessee”), entered into Lease No. 6573 dated February 11, 1963 (as amended prior hereto, the “Existing Lease”) whereby prior to the Effective Date Lessee has leased from County that certain real property in the Marina del Rey Small Craft Harbor now commonly known as Parcel No. 27R and which is more specifically described on Exhibit A attached hereto and incorporated herein by this reference (the “Premises”), the term of which commenced on January 1, 1963 and currently extends through December 31, 2022 (the “Existing Expiration Date”); and

WHEREAS, Lessee has succeeded to the Original Lessee’s right, title and interest as lessee under the Existing Lease; and

WHEREAS, County and Lessee have entered into that certain Option to Amend Lease Agreement dated May 30, 2006 (as amended, the “Option Agreement”), pursuant to which County has granted Lessee an option (the “Option”) to amend and restate the Existing Lease in its entirety, upon the terms and conditions more specifically provided herein, including, without limitation, (a) the extension of the term of the Existing Lease through December 31, 2061, and (b) the redevelopment of the Premises in accordance with the terms and provisions hereof; and

WHEREAS, Lessee has exercised the Option in accordance with the terms and provisions of the Option Agreement.

NOW, THEREFORE, in reliance on the foregoing and in consideration of the mutual covenants, agreements and conditions set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto and each of them do agree that the Existing Lease is hereby amended and restated in its entirety, as follows:

1. **BACKGROUND AND GENERAL.**

1.1 **Definitions.** The defined terms in this Lease shall have the following meanings:

1.1.1 “ACCOUNTING YEAR” shall have the meaning set forth in Section 14.7.

Applicable Rate shall be deemed the maximum rate permissible under Applicable Laws notwithstanding the first sentence of this definition.

1.1.13 **“APPROVED GOVERNMENTAL CHANGES”** shall mean any changes to the Redevelopment Work (or other Alterations, as applicable) required by the California Coastal Commission or other applicable governmental agency as a condition to the issuance of required governmental permits and approvals for such Redevelopment Work (or other Alterations, as applicable), except for any change that is a Material Modification.

1.1.14 **“ASSIGNMENT STANDARDS”** shall have the meaning set forth in Section 11.2.

1.1.15 **“AUDITOR-CONTROLLER”** shall mean the Auditor-Controller of the County of Los Angeles, California.

1.1.16 **“AWARD”** shall have the meaning set forth in subsection 6.1.3.

1.1.17 **“BASE VALUE”** shall have the meaning set forth in subsection 4.8.1.1.

1.1.18 **“BENEFICIAL INTEREST”** or **“BENEFICIAL RESIDUAL INTEREST”** shall have the meaning set forth in subsection 4.6.4.

1.1.19 **“BOARD”** shall mean the Board of Supervisors for the County of Los Angeles.

1.1.20 **“BUSINESS DAY”** shall have the meaning set forth in Section 17.3.

1.1.21 **“CALCULATION NOTICE”** shall have the meaning set forth in Section 4.7.

1.1.22 **“CAPITAL IMPROVEMENT FUND”** shall have the meaning set forth in Section 5.13.

1.1.23 **“CHANGE OF OWNERSHIP”** shall have the meaning set forth in subsection 4.6.1.

1.1.24 **“CHANGE OF CONTROL”** shall have the meaning set forth in subsection 4.6.1.

1.1.25 **“CITY”** shall mean the City of Los Angeles, California.

1.1.26 **“CO DATE”** shall mean the date of the issuance of the first certificate of occupancy (whether temporary or permanent) for any of the Additional Hotel Rooms.

1.1.27 **“CONDEMNATION”** shall have the meaning set forth in subsection 6.1.1.

1.1.28 **“CONDEMNOR”** shall have the meaning set forth in subsection 6.1.4.

- 1.1.44 **"ENR INDEX"** shall mean the Engineering News Record (ENR) Construction Cost Index for the Los Angeles Area, or such substitute index as the parties may mutually agree upon if such index is no longer published or otherwise available.
- 1.1.45 **"EVENTS OF DEFAULT"** shall have the meaning set forth in Section 13.1.
- 1.1.46 **"EXCLUDED TRANSFERS"** shall have the meaning set forth in subsection 4.6.2.
- 1.1.47 **"EXISTING EXPIRATION DATE"** shall have the meaning set forth in the preamble to this Lease.
- 1.1.48 **"EXISTING LEASE"** shall have the meaning set forth in the preamble to this Lease.
- 1.1.49 **"EXTENDED TIME"** shall have the meaning set forth in Section 15.15.
- 1.1.50 **"FAIR MARKET RENTAL VALUE"** shall have the meaning set forth in subsection 4.3.1.
- 1.1.51 **"FINAL PLANS AND SPECIFICATIONS"** shall have the meaning set forth in subsection 5.3.3.
- 1.1.52 **"FINANCING EVENT"** shall have the meaning set forth in Section 12.1.
- 1.1.53 **"FIRST DEPOSIT MONTH"** shall have the meaning set forth in Section 5.14.
- 1.1.54 **"FORCE MAJEURE"** means fire, earthquake, flood, tornado or other act of God, civil disturbance, war, organized labor dispute, freight embargo or other similar cause or event beyond the control of Lessee.
- 1.1.55 **"FORCE MAJEURE DELAY"** shall have the meaning set forth in subsection 5.6.1.
- 1.1.56 **"GROSS ERROR"** shall have the meaning set forth in subsection 16.15.4.
- 1.1.57 **"GROSS PROCEEDS"** shall have the meaning set forth in Section 4.8.
- 1.1.58 **"GROSS RECEIPTS"** shall have the meaning set forth in subsection 4.2.2.3.
- 1.1.59 **"IMPROVEMENTS"** means all buildings, structures, fixtures, fences, anchorage facilities, fountains, walls, paving, parking areas, driveways, walkways,

1.1.73 "MINIMUM STANDARDS" shall mean the requirements of Policy Statement No. 25 and the Specifications and Minimum Standards of Architectural Treatment and Construction for Marina del Rey approved in 1989, as modified by County or the Department from time to time in a manner consistent with commercially reasonable standards applicable to other comparable commercial projects in Marina del Rey.

1.1.74 "MONTHLY MINIMUM RENT" shall have the meaning set forth in subsection 4.2.1.

1.1.75 "NET AWARDS AND PAYMENTS" shall have the meaning set forth in Section 6.7.

1.1.76 "NET PROCEEDS SHARE" shall have the meaning set forth in Section 4.6.

1.1.77 "NET REFINANCING PROCEEDS" shall have the meaning set forth in subsection 4.8.5.

1.1.78 "NET TRANSFER PROCEEDS" shall have the meanings set forth in subsections 4.8.1 and 4.8.2.

1.1.79 "NOTICE OF COMPLETION" shall have the meaning set forth in subsection 5.7.7.

1.1.80 "OPTION AGREEMENT" shall have the meaning set forth in the preamble to this Lease.

1.1.81 "PARTIAL TAKING" shall have the meaning set forth in Section 6.5.

1.1.82 "PAYMENT BOND" shall have the meaning set forth in subsection 5.4.3.2.

1.1.83 "PERCENTAGE RENT" shall have the meaning set forth in subsection 4.2.2.

1.1.84 "PERFORMANCE BOND" shall have the meaning set forth in subsection 5.4.3.1.

1.1.85 "PERMITTED CAPITAL EXPENDITURES" shall have the meaning set forth in Section 5.13.

1.1.86 "PERMITTED USES" shall have the meaning set forth in Section 3.1.

1.1.87 "PREMISES" shall have the meaning set forth in the preamble to this Lease.

1.1.88 "PRIME RATE" shall have the meaning set forth in subsection 4.3.5.

1.1.108 "SUBSEQUENT RENOVATION" shall have the meaning set forth in Section 5.11.

1.1.109 "SUBSEQUENT RENOVATION FUND" shall have the meaning set forth in Section 5.12.

1.1.110 "SUBSEQUENT RENOVATION PLAN" shall have the meaning set forth in Section 5.11.

1.1.111 "TERM" shall have the meaning set forth in Section 2.1.

1.1.112 "TIME OF THE ESSENCE" shall have the meaning set forth in Section 15.2.

1.1.113 "UNINSURED LOSS" shall have the meaning set forth in Section 10.2.

1.1.114 "UNREASONABLE COUNTY ACTIVITY" shall have the meaning set forth in subsection 5.6.2.

1.1.115 "WRITTEN APPRAISAL EVIDENCE" shall have the meaning set forth in subsection 16.7.

1.2 **Lease.** For and in consideration of the payment of rentals and the performance of all the covenants and conditions of this Lease, County hereby leases to Lessee, and Lessee hereby leases and hires from County, an exclusive right to possess and use, as tenant, the Premises for the Term (as hereinafter defined) and upon the terms and conditions and subject to the requirements set forth herein. This Lease fully amends, restates and supercedes the Existing Lease.

1.2.1 **As-Is.** Lessee acknowledges that (1) it is currently in possession of the Premises, (2) Lessee or its predecessors-in-interest have continuously occupied and/or managed and operated the Premises since 1963, and (3) the Improvements now existing on the Premises were constructed by Lessee or its predecessors with contractors selected by them. Except as provided in subsection 1.2.3, Lessee accepts the Premises in their present condition notwithstanding the fact that there may be certain defects in the Premises, whether or not known to either party to this Lease, at the time of the Effective Date and Lessee hereby represents that it has performed all investigations necessary, including without limitation soils and engineering inspections, in connection with its acceptance of the Premises "AS IS WITH ALL FAULTS". Lessee hereby accepts the Premises on an "AS IS WITH ALL FAULTS" basis and, except as expressly set forth in this Lease, Lessee is not relying on any representation or warranty of any kind whatsoever, express or implied, from County or any other governmental authority or public agency, or their respective agents or employees, as to any matters concerning the Premises and/or any Improvements located thereon, including without limitation: (i) the quality, nature, adequacy and physical condition and aspects of the Premises and/or any Improvements located thereon, including, but not limited to, the structural elements, foundation, roof, protections against ocean damage, erosion, appurtenances, access,

the following: (a) if the Effective Date is prior to July 1 of a calendar year, then the first Lease Year after the Effective Date shall mean the period from the Effective Date through December 31 of the calendar year during which the Effective Date occurs, and (b) if the Effective Date is on or after July 1 of a calendar year, then the first Lease Year shall mean the period from the Effective Date through December 31 of the calendar year following the calendar year during which the Effective Date occurs.

2.2 **Extension Fee Installment Payments.** In consideration of the extension of the term of the Existing Lease as provided herein, Lessee shall be required to pay to County the Extension Fee Installment Payments described in Section 4.2 of the Option Agreement. The Extension Fee Installment Payments shall be considered as additional rent payable by Lessee under this lease. The parties hereto agree and acknowledge that prior to the execution of the Option Agreement County conducted an appraisal of the thirty-nine (39) year extension of the Term from January 1, 2023 to December 31, 2061 as provided herein, and that such appraisal determined that the Extension Fee payable under the Option Agreement was not less than the appraised value of the Lease extension provided herein.

2.3 **Ownership of Improvements During Term.** Until the expiration of the Term or sooner termination of this Lease and except as specifically provided herein, Lessee shall own all Improvements now existing and constructed by Lessee or its predecessors or hereafter constructed by Lessee upon the Premises, and all alterations, additions, or betterments made thereto by Lessee.

2.4 **Reversion of Improvements.** Upon the expiration of the Term or sooner termination of this Lease, whether by cancellation, forfeiture or otherwise:

2.4.1 **County's Election to Receive Improvements.** At the election of County, all structures, buildings, Improvements and all alterations, additions, and betterments thereto, and all other Improvements made to or upon the Premises shall remain upon and be surrendered with the Premises as part thereof and title thereto shall vest in County without compensation therefor to Lessee. Nothing contained herein shall be construed to deny or abrogate the right of Lessee, prior to the expiration of the Term or termination of this Lease, to receive any and all proceeds which are attributable to the Condemnation of business installations, Improvements, structures and buildings belonging to Lessee immediately prior to the taking of possession by the Condemnor as said rights are set forth in Article 6 of this Lease, or to remove any furniture or equipment not intended to be permanently affixed to, or reasonably necessary for the operation of, the Premises, any signage identifying Lessee (as opposed to other signage used in the operation of the Premises and associated Improvements), or any personal property, upon the expiration of the Term or earlier termination of this Lease or at any time during the Term, subject to Lessee's obligations under this Lease to use the Premises for the Permitted Uses.

2.4.2 **Duty to Remove.** No earlier than eleven (11) years, and no later than ten (10) years prior to the expiration of the Term, Lessee shall deliver to County a report prepared by a construction and demolition expert approved by County, such approval not to be unreasonably withheld or delayed, which report details and estimates the cost of

letter of credit, bond or other form of security in form and amount, and from an issuer, satisfactory to County, and (ii) a schedule satisfactory to County for the delivery by Lessee of the Removal Security Fund, which schedule shall in all events provide for a full funding of the Removal Security Fund not later than two (2) years prior to the expiration of the Term. The amount of the Removal Security Fund shall be no less than the estimated costs to remove the Improvements set forth in the report described above, adjusted annually to reflect the increase or decrease, if any, in the ENR Index over the ENR Index as of the date of cost estimation set forth in such expert report; provided, however, that in no event shall such adjustment result in a Removal Security Fund of an amount less than that set forth in the expert report. If County requires Lessee to establish a Removal Security Fund, then Lessee shall have the right to credit to such removal fund the monthly Capital Improvement Fund deposits thereafter required to be made by Lessee during the remaining Term pursuant to Section 5.13 of this Lease, to the extent that in the Director's sole and absolute judgment sufficient funds remain available from time to time in the Capital Improvement Fund to satisfy the purposes of Section 5.13 of this Lease. Any uncured failure by Lessee to fund the Removal Security Fund as required under this subsection 2.4.2 shall constitute an Event of Default.

If County requires the Removal Security Fund, Lessee shall have the right to use all amounts remaining in the Capital Improvement Fund at the end of the Term for the Improvement removal purposes described in this subsection 2.4.2, if and to the extent that such funds were not required for Capital Improvement Fund purposes. If a Removal Security Fund is required, but County does not require the removal of the Improvements at the end of the Term, then the Removal Security Fund (including any Capital Improvement Funds that were transferred to the Removal Security Fund and were not required for Capital Improvement Fund purposes under Section 5.13) shall be returned to Lessee.

If County decides not to require Lessee to remove the buildings, structures and Improvements on the Premises as provided above, then upon the expiration of the Term, or earlier termination of the Lease, Lessee shall turn over the Premises to County in good and workmanlike condition, consistent with the condition of other buildings, structures and Improvements of comparable age and construction quality.

2.4.3 **County's Right to Remove Improvements**. If Lessee fails to perform demolition, removal and restoration obligations required to be performed by Lessee hereunder, then County may, at its election, sell, remove or demolish the Improvements, and such event, Lessee shall reimburse County for any cost or expense thereof in excess of any funds received by County through the security above provided and any consideration received by County as a result of such sale, removal or demolition.

2.4.4 **Duty to Remove Equipment, Etc.** No later than the expiration of the Term or sooner termination of this Lease (or within the additional one hundred twenty (120) day period described in subsection 2.4.2 above), Lessee shall in any event remove at its cost and expense such furniture, equipment and personal property as are not firmly affixed to said structures, buildings and Improvements or reasonably necessary for the orderly operation of the Premises. Should Lessee fail to so remove said furniture,

portion of the Premises be maintained so as to render said Premises a fire hazard or unsanitary, unsightly, offensive, or a risk to public health and safety, nor shall any similar activity be permitted on any adjacent public street or adjacent property. Lessee shall be permitted to perform the Redevelopment Work on the Premises, provided that such work is conducted in compliance with Article 5 of this Lease.

3.2.2 **Restrictions and Prohibited Uses.** Without expanding upon or enlarging the Permitted Uses of the Premises as set forth in this Lease, the following uses of the Premises are expressly prohibited:

3.2.2.1 The Premises shall not be used or developed in any way which is in violation of any Applicable Laws;

3.2.2.2 The Premises shall not be used or developed in any way in a manner inconsistent with the Permitted Uses. Without limiting the foregoing, no part of the Premises shall be used by any person for any adult entertainment purposes, as such term refers to graphic, explicit and/or obscene depictions of sexual activity;

3.2.2.3 No improvement on the Premises shall be permitted to fall into disrepair and all Improvements shall at all times be kept in good condition and repair consistent with the requirements of Section 10.1 of this Lease;

3.2.2.4 No condition shall be permitted to exist upon the Premises which shall induce, breed or harbor infectious plant diseases, rodents, or noxious insects and Lessee shall take such measures as are appropriate to prevent any conditions from existing on the Premises which create a danger to the health or safety of any persons residing or working at, or persons patronizing, the Premises;

3.2.2.5 Without the prior written reasonable approval of Director, no antennae or other device for the transmission or reception of television signals or any other form of electromagnetic radiation shall be erected, used or maintained by Lessee outdoors above ground on any portion of the Premises, whether attached to an improvement or otherwise; provided that the foregoing requirement to obtain Director's approval as to any antennae or other transmission or reception devices shall be inapplicable to the extent that such requirement violates Applicable Law;

3.2.2.6 No tools, equipment, or other structure designed for use in boring for water, oil, gas or other subterranean minerals or other substances, or designed for use in any mining operation or exploration, shall hereafter be erected or placed upon or adjacent to the Premises, except (a) as is necessary to allow Lessee to perform its maintenance and repair obligations pursuant to this Lease, and (ii) for such boring or drilling as necessary to perform water testing or monitoring, or any dewatering program to relieve soil water pressure;

3.2.2.7 Except for the Excluded Conditions, no adverse environmental condition in violation of Applicable Laws shall be permitted to exist on any portion of the Premises, nor shall any toxic or hazardous wastes be permitted to be generated, treated, stored, disposed of, or otherwise deposited in or on or allowed to emanate

3.7 **Rules and Regulations.** Lessee agrees to comply with such other reasonable rules and regulations governing the use and occupancy of the Premises as may be promulgated by County from time to time for general applicability on a non-discriminatory basis to other hotel and/or commercial facilities in Marina del Rey, and delivered in writing to Lessee. Any dispute as to whether County has acted unreasonably in connection with the matters described in this Section 3.7 shall be submitted to arbitration pursuant to Article 16 of this Lease.

3.8 **Reservations.** Lessee expressly agrees that this Lease and all rights hereunder shall be subject to all prior encumbrances, reservations, licenses, easements and rights of way (a) existing as of the date of the Existing Lease, or (b) otherwise referenced in this Lease in, to, over or affecting the Premises for any purpose whatsoever, or (c) consented to by Lessee.

Without limiting the foregoing, Lessee expressly agrees that this Lease and all rights hereunder shall be subject to all prior matters of record and the right of County or City existing as of the Effective Date or otherwise disclosed to or known to Lessee, as their interests may appear, to install, construct, maintain, service and operate sanitary sewers, public roads and sidewalks, fire access roads, storm drains, drainage facilities, electric power lines, telephone lines and access and utility easements across, upon or under the Premises, together with the right of County or the City to convey such easements and transfer such rights to others. Notwithstanding the foregoing or anything herein to the contrary, County agrees to cooperate with Lessee, at Lessee's cost, in Lessee's efforts to address title matters, if any, which would prevent Lessee from proceeding with the redevelopment of the Premises in accordance with the Redevelopment Work, as long as such efforts do not materially adversely affect the County (e.g., cooperating with Lessee in the relocation at Lessee's cost of any easements which interfere with the Redevelopment Work, to the extent such relocation is reasonably acceptable to County).

3.9 **Street Widening and Waiver of Abutter's Rights of Access.** The leasehold interest in the Premises granted to Lessee under this Lease is also subject to the following additional reservations, covenants, waivers, releases and restrictions:

3.9.1 **Street Widening.** Upon written notice from County to Lessee, the Premises shall be reduced to exclude from the Premises that portion of the Premises necessary for the future widening of Admiralty Way associated with the Admiralty Way Widening project and the Admiralty Way/Via Marina Reconfiguration project (the "Dedication Area"). The Dedication Area shall consist of the area described on Exhibit F attached to this Lease, or such portion thereof as elected by County. Until written notice from County of the exclusion of the Dedication Area from the Premises, the Dedication Area shall remain a part of the Premises under this Lease. Lessee shall not construct any Improvements in the Dedication Area other than any landscape or hardscape Improvements approved by County in its sole discretion. All Improvements in the frontage along Admiralty Way shall be constructed by Lessee in accordance with the geometric design plan dated February 25, 2009 issued by the Department of Public Works of the County ("Public Works"), or as otherwise directed by Public Works in connection with the issuance of the permits for the construction of the Redevelopment Work. Upon written notice from County of the exclusion of the Dedication Area from the Premises, the Dedication Area shall be automatically excluded and deleted from the Premises as of the effective date elected by County, without further action by the parties. Any Encumbrance granted with respect to the Premises shall be subject and subordinate to the terms and provisions

include a statement in all Subleases to the effect that the interests created therein are derived from the Lessee's interest under this Lease and that Lessee's interest requires the payment of a possessory interest tax.

4.2 **Rental Payments.** Throughout the Term, for the possession and use of the Premises granted herein, Lessee shall pay County a monthly amount equal to the greater of (a) Monthly Minimum Rent or (b) Percentage Rent.

4.2.1 **Annual Minimum Rent and Monthly Minimum Rent.** Lessee shall pay to County the minimum rent described in this subsection 4.2.1 (subject to adjustment pursuant to Sections 4.3 below) during each Lease Year of the Term (the "**Annual Minimum Rent**"). Annual Minimum Rent shall be payable by Lessee to County on a monthly basis in equal installments of one-twelfth (1/12th) of the Annual Minimum Rent (the "**Monthly Minimum Rent**"); provided, however, if any Lease Year is shorter or longer than a full calendar year, or if any month during the Term is less than a full calendar month, then the Annual Minimum Rent and Monthly Minimum Rent, as applicable, shall be calculated on a pro rata basis based on the number of days in the applicable period as compared to the number of days in such full calendar year or month, as applicable.

4.2.1.1 During the period from the Effective Date through the earlier of the CO Date or the Required Completion Date, the Annual Minimum Rent shall be equal to seventy-five percent (75%) of the average total annual rent (including, without limitation, minimum rent and percentage rent) which was payable to County under the Existing Lease during the three (3) year period immediately preceding the Effective Date. Lessee shall provide written notice to County of the CO Date promptly upon the occurrence thereof.

4.2.1.2 During the period commencing on the day after the end of the period described in subsection 4.2.1.1 above and continuing until the end of the calendar year during which the third anniversary of the last day of the period described in subsection 4.2.1.1 occurs, the Annual Minimum Rent shall be equal to the product of (a) the average total Annual Minimum Rent and Percentage Rent projected to be payable by Lessee for the three (3) year period after the CO Date, multiplied by (b) .75; provided, however, in no event shall the Annual Minimum Rent payable by Lessee under this subsection 4.2.1.1 be less than the Annual Minimum Rent payable by Lessee pursuant to subsection 4.2.1.1 above. Not later than three (3) months prior to the earlier of the projected CO Date or the Required Completion Date, Lessee shall deliver to County for County's reasonable approval Lessee's projected Gross Receipts for the three (3) year period following the CO Date, which projected Gross Receipts, as reasonably approved by County, shall be used to calculate the Annual Minimum Rent payable by Lessee under this subsection 4.2.1.2.

4.2.1.3 Effective at the end of the period described in subsection 4.2.1.2 and every three (3) years thereafter until the first Renegotiation Date, and thereafter effective each third (3rd), sixth (6th) and ninth (9th) anniversaries of each Renegotiation Date (each an "**Adjustment Date**" and collectively the "**Adjustment**

occupancy of restaurants, stores, shops or other commercial establishments shall not be included in the calculation of Percentage Rent under this subsection (c1) if the Gross Receipts from the operation of such businesses are required to be reported under other categories of this subsection 4.2.2;

(d) That percentage determined pursuant to category (t) below, of Gross Receipts from the sale of new or used boats, house trailers, trailer cabanas;

(e) That percentage determined pursuant to category (t) below, of Gross Receipts received for boat brokerage, car rental, marine insurance, or other similar services; and FIVE PERCENT (5%) of Gross Receipts received by Lessee or a Sublessee for commissions or other fees for laundry, dry cleaning or other similar activities where earnings are normally received on a commission basis, in the case in which Lessee or a Sublessee is the operator of such enterprise, or TWENTY PERCENT (20%) of any commissions or fees collected by Lessee or a Sublessee from such enterprise if a third party provider is the operator of such enterprise;

(f) With respect to service enterprises not otherwise described in this subsection 4.2.2, including without limitation, cable, internet, satellite, telecommunication or other antennae fees, telephone, electricity co-generation and other utility services, FIVE PERCENT (5%) of Gross Receipts received by Lessee or a Sublessee from such enterprise if Lessee or a Sublessee is the operator of such enterprise, or TWENTY PERCENT (20%) of any commissions or fees collected by Lessee or a Sublessee from such enterprise if a third party provider is the operator of such enterprise;

(g) That percentage determined pursuant to category (t) below, of Gross Receipts from the rental of boats, or from ticket sales or other fees, charges or Gross Receipts from sport fishing or other commercial boating activities such as charter boat or bareboat charters, but not including the boating activities described in category (n) below;

(g1) FIVE PERCENT (5%) of Gross Receipts from the rental of bicycles, cycle carriages, scooters or other similar equipment;

(h) With respect to the installation and/or operation of coin-operated vending or service machines, including pay telephones, FIVE PERCENT (5%) of Gross Receipts received by Lessee or a Sublessee from such enterprise if Lessee or a Sublessee is the operator of such enterprise, or TWENTY-FIVE PERCENT (25%) of any commissions or other fees collected by Lessee or a Sublessee from such enterprise if a third party provider is the operator of such enterprise;

(i) TEN PERCENT (10%) of Gross Receipts from the operation of a bar, tavern, cocktail lounge, discotheque, night club or other facilities engaged primarily in the on-premises sale of alcoholic beverages, except as provided for in subsection (j);

(j) THREE AND ONE-HALF PERCENT (3.5%), of Gross Receipts from the operation of restaurants, restaurant/cocktail lounge combination, coffee shops, beach and theater food facilities, except that Gross Receipts from facilities established and operated

attributable to parking charges in excess of the market hotel rate for such parking shall not be included in Percentage Rent under this category (r) but shall instead be considered Gross Receipts from the rental, occupancy or use of hotel accommodations under category (c) above; the "Relevant Market" shall mean the following hotels (or successor operations at the same location) that are then in operation: (I) Marina del Rey Marriott located on Parcel 141V; (II) Ritz Carlton Hotel located on Parcel 125H; (III) Marina del Rey Hotel located on Parcels 42/43; (IV) Courtyard Los Angeles Marina del Rey located at 13480 Maxella Avenue; and (V) any other then existing hotel located in Marina del Rey with 50 or more hotel rooms; provided, however, that a hotel that is otherwise included in the Relevant Market as described above and that is located on a leasehold with County that requires the lessee to pay to County percentage rent shall not be included in the Relevant Market unless in such lessee's lease with County the percentage rental rate applicable to gross receipts from parking revenues collected by or for the benefit of such lessee (i.e., gross receipts collected on a basis similar to that described in clauses (r)(1)(ii) and (r)(2) above and not gross receipts consisting of compensation paid to the lessee by the operator for the right to operate such parking facilities as in clause (r)(1)(i) above) is less than the percentage rental rate applicable to gross receipts from hotel room occupancy;

(s) FIVE PERCENT (5%) of Gross Receipts from the sale of miscellaneous goods and services consistent with the Permitted Uses but not specifically provided for elsewhere in this subsection 4.2.2;

(s1) FOUR PERCENT (4%) of the Gross Receipts from the operation of any stores, shops or boutiques selling items at retail; and

(t) In the case where a specific percentage in the foregoing schedule has not been provided, then concurrent with County's or Director's approval of a specific additional or related use, Director and Lessee shall negotiate in good faith with Lessee to establish the specific percentage to be applied to such use. Such percentage shall be the greater of (1) the average percentage rent received by County with respect to that category of activities within Marina del Rey, California at the time of approval of the additional or related use, or (2) the most recent agreement between County and a Marina del Rey lessee, whether by arbitration or otherwise, with respect to the appropriate percentage to be applied to that use. The percentage rent for the additional or related use as determined pursuant to this subsection (t) shall remain in effect until the next Renegotiation Date.

4.2.2.1 **Other Activities.** If Director or Lessee reasonably determine that a percentage of Gross Receipts is not suitable or applicable for a particular activity not described above, although permitted hereunder, Director and Lessee shall mutually establish a minimum monthly payment to County as payment for the privilege of engaging therein, which shall remain effective until the next Renegotiation Date. Said minimum monthly amount shall be reasonable in accordance with the revenue generated by such activity and shall be included in Percentage Rent, as determined hereunder, in lieu of a percentage of Gross Receipts therefor.

solely for the convenient operation of the business of Lessee or sublessee and not for the purpose of consummating a sale made in, about or from the Premises;

b. an amount equal to the cash refunded or credit allowed on merchandise returned by customers and accepted by Lessee, or the amount of cash refunded or credit allowed thereon in lieu of Lessee's acceptance thereof, but only to the extent that the sales relating to such merchandise were made in, about or from the Premises; provided that whenever Lessee accepts a credit slip as payment for goods or services, the amount of credit shall be included in Gross Receipts;

c. sales of fixtures, equipment or property which are not Lessee's stock in trade;

d. receipts from insurance claims other than rental interruption or business interruption insurance related to the replacement of Gross Receipts;

e. interest earned by Lessee on funds arising from the Premises or the use thereof, deposited or maintained by Lessee in banks or similar financial institutions;

f. tips and gratuities paid to employees;

g. goods or meals provided to employees of the business operation at cost or less, and complimentary meals offered for promotional purposes, provided, however, that the amounts excluded under this paragraph (g) in connection with a particular business operation shall not exceed two percent (2%) of the Gross Receipts from such business operation in any year;

h. receipts from vending machines used solely by employees of the business operation;

i. fees or charges paid to credit card companies in connection with customer purchases made by use of a credit card, provided, however, that the amounts excluded under this paragraph (i) in connection with a particular business operation shall not exceed one percent (1%) of the Gross Receipts from such business operation in any year;

j. interest or other charges paid by customers of Sublessees for the extension of credit; and

k. the sale of promotional merchandise by Sublessees at cost.

(5) Gross Receipts shall not include amounts reimbursed to Lessee for the Cost of each Sublessee's submetered electricity, water and gas for such Sublessee's space, provided that (1) each Sublessee's obligation to reimburse Lessee for such utility charges is separate and apart from such Sublessee's obligation to pay

4.2.2.8 **Policy Statements.** Director, by Policy Statement and with the approval of Lessee, Auditor-Controller and County Counsel may further interpret the definition of Gross Receipts, with such interpretations to be a guideline in implementing the foregoing subsections of this Lease.

4.2.2.9 **CVB Surcharge.** Lessee funds its share of the cost of the operation of the Marina del Rey Convention and Visitor's Bureau ("CVB") through the self-imposed collection from its customers of a one percent (1%) surcharge against the fees charged to its customers for the occupancy of hotel and motel sleeping accommodations (the "Surcharge") and the monthly payment of the Surcharge to the CVB (the "CVB Payment"). In recognition of the mutually beneficial services provided by the CVB and in acknowledgment of the intended use of the Surcharge, County and Lessee agree that the Surcharge shall be excluded from Gross Receipts to the extent that Lessee pays the Surcharge to the CVB in the form of the CVB Payment prior to the date on which the monthly Gross Receipts report for the month during which the Surcharge is collected is due. Lessee shall report, as separate line items in the monthly Gross Receipts report, the amounts of the Surcharge excluded from Gross Receipts and the CVB Payment for such reported month. If for any month the CVB Payment is less than the Surcharge, then the allowable exclusion shall be limited to the actual CVB Payment, and Percentage Rent shall be payable under category (c) of subsection 4.2.2 with respect to the amount by which the Surcharge exceeds the CVB Payment. All records relating to the Surcharge and CVB Payments shall be maintained by Lessee in conformance with the requirements of Article 14 of this Lease.

4.3 **Renegotiation of Annual Minimum and Percentage Rents.** Effective as of the first January 1 following the tenth (10th) anniversary of the earlier of the CO Date or the Required Completion Date, and each ten (10) years thereafter (each a "Renegotiation Date" and collectively, the "Renegotiation Dates"), the Annual Minimum Rent and Percentage Rent shall be readjusted to the Fair Market Rental Value (as defined below) of the Premises.

4.3.1 **Fair Market Rental Value.** As used herein, "Fair Market Rental Value" shall mean, as of each Renegotiation Date, the fair market rent (including an annual minimum rent), expressed as respective percentages of Gross Receipts in accordance with the categories enumerated in subsection 4.2.2, which the Premises would bring, on an absolute net basis, taking into account the Permitted Uses, all relevant and applicable County policies and all of the other terms, conditions and covenants contained in the Lease, if the Premises were exposed for lease for a reasonable time on an open and competitive market to a lessee for the purpose of the Permitted Uses, where County and the respective tenant are dealing at arms length and neither is under abnormal pressure to consummate the transaction, together with all restrictions, franchise value, earning power and all other factors and data taken into account in accordance with California law applicable from time to time to eminent domain proceedings.

4.3.2 **Renegotiation Period.** Not more than one (1) year nor less than nine (9) months prior to the Renegotiation Date, Lessee shall deliver to County written notice setting forth Lessee's determination of the Fair Market Rental Value of the Premises.

arbitration as set forth in Article 16 of this Lease and the parties shall execute an amendment to this Lease setting forth the Fair Market Rental Value as determined by arbitration. In order to determine the Fair Market Rental Value of the Premises, the arbitrator shall take into consideration all of the terms, conditions and covenants of this Lease, the earning power and all of the factors and data relating to such value required or proper to be considered in determining the fair rental value of leaseholds under the laws of eminent domain in the State of California. During the period of arbitration, County and Lessee shall abide by all of the terms and conditions of this Lease, including but not limited to Lessee's obligation to pay to County Annual Minimum Rent and Percentage Rent at then existing levels.

4.3.5 **Retroactivity.** In the event that, pursuant to subsections 4.3.3 or 4.3.4 hereof, the parties execute an amendment to this Lease setting forth the Fair Market Rental Value and the Annual Minimum Rent, such amendment, if executed prior to the Renegotiation Date, shall be effective as of the Renegotiation Date; if executed after the Renegotiation Date, such amendment shall be retroactive to the Renegotiation Date. In the event that such amendment is executed after the Renegotiation Date, then, within thirty (30) days after such execution, Lessee shall pay to County, or County shall at its election pay or credit to Lessee, the difference, if any, between (a) such Fair Market Rental Value for the Premises and (b) the actual Annual Minimum Rent and Percentage Rent paid by Lessee to County, for the period of time from the Renegotiation Date until the date of such payment. Lessee (with respect to overpayments) or County (with respect to underpayments) shall further be entitled to interest on each portion of such payment from each date on which the applicable rental payments were payable under this Lease to the date paid or credited, whichever is applicable, at the following rates, compounded quarterly:

(1) the interest rate applicable to the first six (6) months following the Renegotiation Date shall be equal to the average daily rate for the non-restricted funds held and invested by the Treasurer and Tax Collector of Los Angeles County during that period, computed by the Auditor-Controller ("**County Pool Rate**"); and,

(2) the interest rate applicable to any period of time in excess of six (6) months following the Renegotiation Date shall be the average prime rate of interest published in the Wall Street Journal (the "**Prime Rate**") plus one percent (1%) for the period between the date which is six (6) months after the Renegotiation Date and the date of payment.

4.4 **Payment.** Monthly Minimum Rent shall be paid by Lessee in advance. Payments of Minimum Monthly Rent shall be received by County on or before the first day of each calendar month of the Term. Percentage Rent shall be paid by Lessee in arrears. Percentage Rent due, if any, for a given month of the Term shall be received by County on or before the fifteenth day of the calendar month following each month of the Term, calculated as follows: the Lessee shall calculate the total Percentage Rent owed to County for the relevant month of the Term; it shall deduct from said amount the total Monthly Minimum Rent paid to County for that same month; if the resulting amount is a positive number, Lessee shall pay that amount to County; if that amount is a negative number, no Percentage Rent shall be paid to

Major Sublessee, or (d) a Change of Control (as defined below) of Lessee or a Major Sublessee.

For the purposes of this Lease, "**Change of Control**" shall refer to a transaction whereby the transferee acquires a beneficial residual interest in Lessee or a Major Sublessee which brings its cumulative beneficial residual interest in Lessee or a Major Sublessee, as appropriate, to over fifty percent (50%).

4.6.2 **Excluded Transfers.** Notwithstanding anything to the contrary contained in this Lease, Changes of Ownership resulting from the following transfers ("**Excluded Transfers**") shall not be deemed to create an obligation to pay County a Net Proceeds Share or any Administrative Charge:

4.6.2.1 a transfer by any direct or indirect partner, shareholder or member of Lessee (or of a limited partnership, corporation or limited liability company that is a direct or indirect owner in Lessee's ownership structure) as of the Effective Date or the date on which a Change of Ownership occurred as to the interest transferred, to any other direct or indirect partner, shareholder or member of Lessee (or of a limited partnership, corporation or limited liability company that is a direct or indirect owner in Lessee's ownership structure) as of the Effective Date, including in each case to or from a trust for the benefit of the immediate family (as defined in subsection 4.6.2.3 below) of any direct or indirect partner or member of Lessee who is an individual;

4.6.2.2 a transfer to a spouse in connection with a property settlement agreement or decree of dissolution of marriage or legal separation, as long as such transfer does not result in a change in the management of Lessee;

4.6.2.3 a transfer of ownership interests in Lessee or in constituent entities of Lessee (i) to a member of the immediate family of the transferor (which for purposes of this Lease shall be limited to the transferor's spouse, children, parents, siblings and grandchildren), (ii) to a trust for the benefit of a member of the immediate family of the transferor, (iii) from such a trust or any trust that is an owner in a constituent entity of Lessee as of the Effective Date, to the settlor or beneficiaries of such trust or to one or more other trusts created by or for the benefit of any of the foregoing persons, whether any such transfer described in this subsection 4.6.2.3 is the result of gift, devise, intestate succession or operation of law, or (iv) in connection with a pledge by any partners of a constituent entity of Lessee to an affiliate of such partner;

4.6.2.4 a transfer of a beneficial interest resulting from public trading in the stock or securities of an entity, where such entity is a corporation or other entity whose stock and/or securities is/are traded publicly on a national stock exchange or is traded in the over-the-counter market and the price for which is regularly quoted in recognized national quotation services;

the respective assets transferred. The Net Proceeds Share shall be calculated only by reference to the amount of such proceeds apportioned to this Lease, a Major Sublease or the beneficial interests therein, whichever is appropriate.

4.7 Calculation and Payment. A deposit of Fifteen Thousand and 00/100 Dollars (\$15,000) toward the Administrative Charge shall be due and payable upon Lessee's notification to County of the proposed Change of Ownership (that is not an Excluded Transfer) or Financing Event and request for County's approval thereof. If the transaction is approved, the balance of the Administrative Charge, if any, and the Net Proceeds Share shall be due and payable concurrently with the consummation of the transaction constituting the Change of Ownership or Financing Event giving rise to the obligation to pay such fee, regardless of whether or not money is transferred by the parties in connection with such consummation. If County disapproves the proposed transaction then, within thirty (30) days after notice of its disapproval, County shall deliver to Lessee a written notice setting forth the Administrative Charge (including documentation in support of the calculation of the Administrative Charge), together with a refund of the amount, if any, of the deposit in excess of the Administrative Charge otherwise allowable under Section 4.6. In the event that the Administrative Charge exceeds the deposit, then Lessee shall pay County the balance of the Administrative Charge otherwise allowable under Section 4.6. within thirty (30) days after receipt of the notice from County setting forth the Administrative Charge (including documentation in support of the calculation of the Administrative Charge) and any additional supporting documentation reasonably requested by Lessee within five (5) business days after its receipt of such notice. Together with its request for County approval of the proposed transaction, Lessee, a Major Sublessee or the holder of a beneficial interest in this Lease or a Major Sublease, whichever is appropriate, shall present to County its calculation of the Net Proceeds Share (if any) anticipated to be derived therefrom, which shall include the adjustment to Improvement Costs, if any, which may result from the payment of such Net Proceeds Share ("**Calculation Notice**"). Each Calculation Notice shall contain such detail as may be reasonably requested by County to verify the calculation of the Net Proceeds Share. Within thirty (30) days after the receipt of the Calculation Notice and all information or data reasonably necessary for County to verify the calculations within the Calculation Notice, County shall notify the party giving the Calculation Notice as to County's agreement or disagreement with the amount of the Net Proceeds Share set forth therein or the related adjustment of Improvement Costs, if any. Failure of County to approve the Calculation Notice in writing within such thirty (30) day period shall be deemed to constitute County's disapproval thereof. Failing mutual agreement within thirty (30) days after the expiration of said thirty (30) day period, the dispute shall be resolved by arbitration as set forth in Article 16 of this Lease in the manner prescribed herein for the resolution of disputes concerning Fair Market Rental Value. In the event County approves a Change of Ownership or Financing Event but a dispute exists as to the Net Proceeds Share in respect thereof or the related adjustment, if any, in Improvement Costs, then the transaction may be consummated after County has disapproved Lessee's Calculation Notice; provided, however, that (i) Lessee shall remit to County as otherwise required hereunder the undisputed portion of the Net Proceeds Share and (ii) Lessee shall deposit the disputed portion of the Net Proceeds Share into an interest bearing escrow account at the closing of the transaction (or deliver to County a letter of credit or other security reasonably acceptable to County in the amount of the disputed portion), which disputed portion shall be distributed in accordance with the arbitration of the dispute pursuant to Article 16 of this

transferor and transferee within ninety (90) days following the date of the transfer and to diligently prosecute such legal action to completion..

4.8 Net Proceeds Share. In the case of the first Change of Ownership occurring during the first ten (10) years after the Effective Date (and any Financing Event to fund such first Change of Ownership), the Net Proceeds Share shall be \$0. In the case of the second and each subsequent Change of Ownership (excluding Excluded Transfers) during the ten (10) year period after the Effective Date, and in the case of each Change of Ownership (excluding Excluded Transfers) after the first ten (10) years following the Effective Date, the Net Proceeds Share shall be a sum equal to the greater of (a) five percent (5%) of the gross sale or transfer proceeds or other consideration given for the interests transferred (but in the case of a transfer to a party affiliated with or otherwise related to the transferor, such consideration shall in no event be deemed to be less than the fair value of the interests transferred) (the "**Gross Proceeds**"), or (b) twenty percent (20%) of the Net Transfer Proceeds from such transfer. Notwithstanding the foregoing, if the Gross Proceeds are less than 105.26% of the Applicable Costs (as defined in subsection 4.8.1 or 4.8.2 below, as applicable), then the Net Proceeds Share under the immediately preceding sentence shall be calculated only in accordance with clause (b) in such sentence (i.e., the Net Proceeds Share shall be twenty percent (20%) of the Net Transfer Proceeds from such transfer).

In the case of the following Financing Events (collectively, the "**Financing Event Net Proceeds Share Exclusions**"), the Net Proceeds Share shall be \$0: (i) the origination of the initial construction loan for the construction of the Redevelopment Work (the "**Initial Construction Loan**"), (ii) the first conversion or refinancing of the Initial Construction Loan to permanent financing within two (2) years following the completion of construction of the Redevelopment Work, and (iii) the first Financing Event occurring during the first ten (10) years after the CO Date (excluding any Financing Event described in clauses (i) or (ii) above). With respect to any other Financing Event not described in the immediately preceding sentence or in the first sentence of this Section 4.8 above, the Net Proceeds Share (if any) shall be equal to twenty percent (20%) of the Net Refinancing Proceeds from such Financing Event. Notwithstanding the foregoing, in connection with any Financing Event used to fund the cost of the acquisition of an Ownership Interest in Lessee that constitutes an Excluded Transfer, if such Financing Event is secured by the Ownership Interest that is transferred, then the Net Refinancing Proceeds from such Financing Event shall not include the portion of the proceeds of such Financing Event used to fund the acquisition cost of such Ownership Interest.

Notwithstanding any contrary provision of this Section 4.8, in the calculation of Net Transfer Proceeds and Net Refinancing Proceeds derived from a Change of Ownership or Financing Event, as applicable, pursuant to the remaining provisions of Section 4.8 below, there shall be no duplication of any amounts to be subtracted from the total consideration received in connection with such transaction, even if a particular amount qualifies for subtraction under more than one category.

4.8.1 Transaction by Original Lessee. In the case of a transfer by Lessee (but not a successor or assignee of Lessee) constituting a Change of Ownership, "**Net Transfer Proceeds**" shall mean the Gross Proceeds less the sum of the following costs with respect to Lessee (but not its successors or assignees) ("**Applicable Costs**");

4.8.2 **Transfer by Lessee's Successor.** In the case of a transfer by a Lessee other than the original Lessee, "Net Transfer Proceeds" shall mean the Gross Proceeds minus the Applicable Costs. For purposes of this subsection 4.8.2, Applicable Costs shall mean the sum of the following with respect to such successor Lessee:

4.8.2.1 The greatest of (a) the sum of the Base Value, plus Improvement Costs incurred subsequent to the Effective Date but prior to the acquisition of the leasehold interest by such successor, (b) the purchase price such successor paid to Lessee or such successor's seller for the interest acquired (or the fair market value of the interests transferred in connection with the seller's acquisition of the leasehold if utilized in connection with the calculation of Net Transfer Proceeds with respect to that sale) or (c) the original principal amount of any Financing Event or Financing Events (on a non-duplicative basis) after such successor Lessee's acquisition of the leasehold and with respect to which County was paid a Net Proceeds Share, plus the principal amount of any financing existing as of the date on which such seller acquired the leasehold or subsequently obtained by Lessee, if such financing has not been refinanced, but without duplication.

4.8.2.2 Improvement Costs actually paid by such successor Lessee after such successor Lessee's acquisition of its leasehold interest in the Premises (but not duplicative of the principal amount of any Financing Event described in clause 4.8.2.1(c) above, the proceeds of which were used to fund such Improvement Costs); provided that such costs have been submitted to County, with an appropriate Lessee certification and evidence reasonably satisfactory to Director that such costs have been incurred, as provided in subsection 4.8.1.2.

4.8.2.3 Documented Transaction Costs with respect to the transfer of the interest by the successor.

4.8.3 **Transfers of Major Sublessee's Interest.** With respect to any Change of Ownership described in subsection 4.6.1(b), subsections 4.8.1 and 4.8.2 shall apply, except that any rents or other amounts received by Lessee from the Major Sublessee and with respect to which a percentage is passed through to County under any provision of this Lease (other than payment of Net Proceeds Share) shall be disregarded in the computation of Net Transfer Proceeds.

4.8.4 **Other Transfers.** With respect to any Change of Ownership that is not an Excluded Transfer and is not described in subsections 4.8.1 through 4.8.3 (e.g., a transfer of an interest in an entity holding a direct or indirect ownership interest in this Lease or in a Major Sublease), subsections 4.8.1 and 4.8.2 shall apply to such Change of Ownership, except that in lieu of deducting the amounts described in either subsections 4.8.1.1 and 4.8.1.2, on the one hand, or subsections 4.8.2.1 and 4.8.2.2, on the other hand, as applicable, in determining Net Transfer Proceeds, the cost to the transferor of the interest being transferred or which was transferred in the past but constitutes a portion of an Aggregate Transfer (which cost shall in no event be deemed to be less than a pro rata share of the amounts described in subsection 4.8.1.1 and 4.8.1.2, on the one hand, or subsections 4.8.2.1 and 4.8.2.2, on the other hand, as applicable, for such interest or for

disputed portion). In the event that the proceeds of the transaction giving rise to the obligation to pay Net Proceeds Share are comprised, in whole or in part, of assets other than cash, then the cash payment of the Net Proceeds Share shall reflect the fair market

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of the existing 42 room Jamaica Bay Inn (including without limitation, room interiors, building facades, interior and exterior common areas, landscaping and hardscape), retaining approximately 21,760 square feet of the existing improvements; (b) the expansion of the Improvements to include approximately 52,000 square feet of new construction, including without limitation, 69 additional hotel rooms, a business center, meeting rooms, expanded restrooms, dining and function patio, an upgraded pool and spa, and an upgraded courtyard space and gardens; and (c) an upgraded second main entry to the Premises on the Palawan Way side of the Premises, including new driveways and landscaping, in accordance design and architectural plans approved by Director prior to their submittal to the Design Control Board.

There shall be no changes, modifications or exceptions to the Development Plan, except as expressly approved in advance in writing by the Director or otherwise in accordance with this Article 5. The scope, design, density, site coverage, layout and open space, view corridors, height, construction materials, landscaping, hardscaping and other improvement specifications pertaining to the Redevelopment Work shall be in accordance with the Development Plan, and shall be subject to County's approval as set forth in this Article 5. Lessee shall be responsible for the acquisition and compliance with all required governmental (including, without limitation, County, Coastal Commission and Design Control Board) planning and entitlement approvals for the Redevelopment Work. Lessee shall be solely responsible for all costs and expenses incurred in connection with the design, entitlement and construction of the Redevelopment Work. Lessee shall expend not less than \$10,602,000 for the cost of the design, entitlement and construction of the Redevelopment Work (which amount may include a development fee not to exceed four percent (4%) of the hard construction costs), which expenditures shall be subject to verification and reasonable approval by County.

5.2 **Application of Article 5 to Redevelopment Work.** The remaining sections of this Article 5 pertain to the construction of the Redevelopment Work and to any other Alterations (as defined below) which Lessee may be required or desire to make to the Premises during the Term, including without limitation, the Subsequent Renovation described in Section 5.11 below. For purposes of this Lease, Alterations shall mean the construction of any alterations or modifications to the Improvements located on the Premises or the construction of any new Improvements. Both the Redevelopment Work and the Subsequent Renovation shall be considered to be Alterations. Accordingly, except as expressly provided in this Article 5, all of the terms and provisions of Article 5 of this Lease shall be applicable to the Redevelopment Work and the Subsequent Renovation.

5.3 **Plans and Specifications for Alterations.** Lessee shall make no Alterations without the prior written approval of the Director. Prior and as a condition precedent to the construction of any Alterations, Lessee shall submit to Director, for Director's approval, the plans, specifications and other materials described in this Section 5.3 pertaining to such Alterations (except to the extent such submittals and approvals have been previously completed with respect to Redevelopment Work pursuant to the Option Agreement). All Alterations must be consistent with the Permitted Uses set forth in Article 3 of this Lease.

5.3.1 **Schematics and Narrative.** Lessee shall submit to the Director six (6) sets of schematic plans together with a narrative description and construction cost estimate summary clearly delineating the nature, size, configuration and layout of the

TWENTY ONE (21) DAYS AFTER RECEIPT OF THESE MATERIALS IN WHICH TO APPROVE OR DISAPPROVE THEM. FAILURE TO DISAPPROVE THESE MATERIALS IN WRITING WITHIN TWENTY ONE (21) DAYS OF YOUR RECEIPT OF THESE MATERIALS SHALL CONSTITUTE YOUR APPROVAL OF THEM.”

Following any deemed disapproval of such submission by Director, Director shall, within thirty (30) days after receipt of a written request from Lessee, disclose to Lessee in writing Director’s objections to the submission.

5.3.3 **Final Plans and Specifications.** After approval of the preliminary plans, Lessee shall submit for approval by Director six (6) complete sets of final plans, detailed specifications and a construction cost statement for the Alterations, together with one (1) set of appropriate structural computations, identical to those requested or required by the County Director of Public Works incident to the issuance of building permits under the relevant provisions of the Los Angeles County Building Code. Lessee shall file duplicate copies of the final plans, detailed specifications and construction cost statement required by this Section with the County Director of Public Works, together with the necessary and appropriate applications for building permits. Any difference in the scope, size, configuration, arrangement or motif of the Alterations from those described in the approved preliminary plans and specifications shall be separately identified and described. Director shall have twenty one (21) days within which to approve or disapprove such submission, and Director may disapprove such submission only on the grounds that (i) they do not reflect a natural evolution from or that they materially differ from the approved preliminary plans, outline specifications and construction cost estimates (exclusive of any Approved Governmental Changes), or (ii) that any new, different or additional specifications for the Improvements not expressly set forth in, and approved by Director as a part of, the preliminary plans do not meet the requirements for the Improvements set forth in this Article 5. Failure of Director to disapprove said materials within twenty one (21) days after Director’s receipt shall be deemed Director’s approval thereof; provided, however, that in the event that the final plans, detailed construction specifications and construction cost statement contain substantial changes from the preliminary plans, outline specifications and construction cost estimates (other than Approved Governmental Changes), then Director shall have sixty (60) days in which to approve said submission, which approval shall be deemed withheld if not granted in writing within such sixty (60) day period; and provided further, that together with the submission of the final plans, detailed construction specifications and construction cost statement, Lessee must deliver to Director a transmittal letter containing the following text prominently displayed in bold faced type:

“PURSUANT TO SUBSECTION 5.3.3 OF THE AMENDED AND RESTATED LEASE AGREEMENT, IF THESE MATERIALS CONTAIN NO SUBSTANTIAL CHANGES (OTHER THAN APPROVED GOVERNMENTAL CHANGES) FROM THE MATERIALS PREVIOUSLY SUBMITTED TO YOU, YOU HAVE TWENTY ONE (21) DAYS AFTER RECEIPT OF THESE MATERIALS IN WHICH TO APPROVE OR DISAPPROVE THEM. FAILURE TO

5.4.3.2 A corporate surety payment bond, issued by a surety company licensed to transact business as such in the State of California, with Lessee as principal, said company as surety and County as obligee, in a sum equal to one hundred percent (100%) of the total construction cost anticipated to be incurred in connection with the approved work, guaranteeing payment for all materials, provisions, supplies and equipment used in, upon, for or about the performance of said construction work or for labor done thereon of any kind whatsoever and protecting County from any and all liability, loss or damages arising out of or in connection with any failure to make such payment (the "Payment Bond"). The Payment Bond shall be in form and content reasonably satisfactory to County.

In the event that construction is performed by a licensed general contractor on behalf of Lessee, provided that such contractor provides County with a bond or bonds compliant with this subsection, and in all material respects reasonably satisfactory to County and otherwise complying with this subsection, County will accept such contractor's bonds in lieu of the Performance Bond and/or Payment Bond by Lessee required by this subsection 5.4.3. Any bonds provided by Lessee or its general contractor pursuant to this subsection may name the Lessee's lender as an additional obligee.

5.4.4 **Alternative Security.** In lieu of providing the Payment and Performance Bonds, Lessee may, in its discretion, provide any one or a combination of the following alternative security reasonably acceptable to Director : (i) a completion guaranty, in form and substance reasonably acceptable to County, made by an individual or entity with a sufficient net worth and liquidity, in the sole discretion of Director, to comply with the terms of such guaranty in view of the potential financial responsibility involved, (ii) a certificate of deposit, cash or United States governmental security, (iii) a letter of credit, or (iv) a set aside letter from Lessee's construction lender. The security described in clauses (ii), (iii) and (iv) above shall be in an amount equal to one hundred percent (100%) of the construction contract price for hard costs, and shall permit County to draw thereon to complete the construction of the Improvements if same have not been completed by Lessee or if a material Event of Default has occurred under this Lease. Any alternative security provided by Lessee pursuant to this subsection may name County and Lessee's construction lender as co-beneficiaries. A condition precedent to Lessee's right to provide the alternate security described in this subsection 5.4.4 shall be delivery by Lessee to County of an opinion of counsel from a firm and in a form acceptable to County to the effect that the construction work does not constitute a public work of improvement requiring the delivery of the bonds described in subsection 5.4.3 above. Director shall have the authority, in his reasonable discretion, to modify, waive or reduce the amount of any bonds or alternate security required hereunder.

5.4.5 **Evidence of Financing.** Lessee shall have provided evidence satisfactory to County of its having sufficient financial resources, as determined by Director, to complete the Redevelopment Work or Alterations, as applicable. Lessee shall furnish Director with copies of all final notes, guarantees, partnership, shareholder or limited liability company agreements, construction loan and/or permanent loan commitments, documents evidencing equity contributions, documents creating and/or perfecting

Completion Date by the length of time of such Force Majeure Delay, although Lessee shall to the extent possible commence and proceed to complete the portions, if any, of the Improvements that can be completed notwithstanding such Force Majeure Delay. Any extension of the Required Completion Date due to Force Majeure Delay shall be limited to the period of the Force Majeure Delay and no such delay shall be considered to have commenced until such time as Lessee shall have notified Director in writing of such delay. The aggregate amount of extensions to the Required Completion Date due to Force Majeure Delay shall not exceed six (6) months.

For purposes of this Article 5, "**Force Majeure Delay**" shall mean delays in construction due to (a) fire, earthquake, flood, tornado or other act of God; (b) civil disturbance, war, organized labor dispute or freight embargo; (c) a hidden condition, including without limitation environmental contamination, relating to the foundation, substructure or subsurface of the Premises which was not known to Lessee as of the commencement of such construction activity; (d) an injunction or restraining order issued pursuant to a court action commenced by a plaintiff other than County or the California Coastal Commission acting in their governmental capacity, Lessee or any person or entity affiliated with Lessee; (e) Unreasonable County Activity (as defined in subsection 5.6.2 below) after the commencement of construction; or (f) other unforeseeable event beyond the control of Lessee. As a condition to clause (d) above constituting a Force Majeure Delay, Lessee shall, regardless of whether it is a named party in the action, diligently pursue the removal of any such restraining order or injunction and shall exhaust all commercially reasonable efforts to appeal such restraining order or injunction.

Lessee and Director shall discuss and attempt to agree on the length of time of any entitled Force Majeure Delay pursuant to this subsection 5.6.1. If they are unable to agree within thirty (30) days after the event or occurrence giving rise to Lessee's claim to an entitlement to a Force Majeure Delay under this subsection 5.6.1, the matter shall be arbitrated as set forth in Article 16.

Notwithstanding anything to the contrary contained in this Lease, no extension, relaxation or modification of the requirement to substantially complete the Redevelopment Work by the Required Completion Date shall relieve Lessee of its obligation to pay County the Annual Minimum Rent, Percentage Rent and other amounts set forth in Article 4 of this Lease.

5.6.2 Unreasonable County Activity. For the purposes of this Lease, the following shall be deemed to be "**Unreasonable County Activity**": (i) County's failure to provide required joinder, if any, in Lessee's proposals for the Improvements described in the Final Plans and Specifications before any governmental agency; or (ii) County's failure to take such other actions in its proprietary capacity reasonably requested by Lessee, at no cost or expense to County, which are necessary for Lessee to proceed with the permit/approval process or County's having taken such actions without Lessee's consent which adversely affected Lessee's rights and obligations hereunder, which were unreasonable and which actually delayed the construction; or (iii) County's failure to comply with the time periods imposed upon County under this Article 5, except in the case where a failure of County to notify Lessee of its approval or disapproval of a matter

amended such that the terms and provisions of this Lease revert back to the terms and provisions of the Existing Lease (including, without limitation, the Existing Expiration Date), as modified by the "Non-Exercise Amendment" described in the Option Agreement (the "Reversion Amendment").

5.7 **Manner of Construction.**

5.7.1 **General Construction Standards.** All construction, alteration, modification or repairs permitted herein shall be accomplished by Lessee with due diligence. Lessee shall take all reasonable steps to minimize any damage, disruption or inconvenience caused by such work and make adequate provisions for the safety and convenience of all persons affected thereby. Lessee shall repair, at its own cost and expense, any and all damage caused by such work, and shall restore the area upon which such work is performed to a condition which is at least equal to or better than the condition which existed before such work was commenced. Additionally, Lessee shall pay or cause to be paid all costs and expenses associated therewith and shall indemnify, defend and hold County harmless from and against all damages, costs, expenses, losses or claims arising out of or in connection with the performance of such work, except to the extent that such damages, costs, expenses, losses or claims are caused by County. Dust, noise and other effects of such work shall be controlled using accepted measures customarily utilized in order to control such deleterious effects associated with construction projects in well populated and developed areas of Southern California.

5.7.2 **Utility Work.** Any work performed by or on behalf of Lessee or any occupant of the Premises to connect to, repair, relocate, maintain or install any storm drain, sanitary sewer, water line, gas line, telephone conduit, or any other utility service shall be performed in a manner that minimizes interference with the provision of such services to the Premises and other persons.

5.7.3 **Construction Safeguards.** Lessee shall erect and properly maintain at all times, as required by the conditions and the progress of work performed by or on behalf of Lessee, all necessary safeguards for the protection of workers and the public.

5.7.4 **Compliance with Construction Documents and Laws; Issuance of Permits.** All Improvements on the Premises shall be completed in substantial compliance with any construction documents approved by County and also in compliance with all applicable local, state and federal laws and regulations. Lessee shall have the sole responsibility for obtaining all necessary permits and shall make application for such permits directly to the person or governmental agency having jurisdiction thereover.

5.7.5 **Notice to Director; Damage to County Improvements.** Lessee further agrees to keep Director apprised of the progress of the work to the end that Director may, upon at least one (1) business day advance notice, timely inspect the Premises to assure proper safeguarding of any County-owned improvements existing on or around the Premises, including but not limited to seawalls, underground conduits and utility lines. If any such County-owned improvement is damaged as a result of construction activity by Lessee or its contractors, Lessee agrees to repair such damage immediately at no cost or

County, for the assignment thereof to County (and Lessee's Encumbrance Holder(s) if required by Lessee's Encumbrance Holder(s)) as security to County for Lessee's performance hereunder, and County shall be furnished with a copy of any such contract, together with the further agreement of the parties thereto, that if this Lease is terminated by County due to Lessee's default, County (or if County enters into a new lease with Lessee's Encumbrance Holder pursuant to Article 12, then Lessee's Encumbrance Holder) may, at its election, use any plans and specifications created by such architect, design professional or contractor in connection with the contract, upon the payment of any sums due to any party thereto. County's right to elect to use plans and specifications as described above shall not include the unauthorized right to use any trade marks, trade names or logos of Lessee or any such architect, design professional or contractor. The assignment to County and Lessee's Encumbrance Holder(s) described in this Section 5.8 shall be effective until the Final Completion Certificate for the subject work is issued, and shall be subordinate to the security interest, if any, of Lessee's construction lender in the assigned contract, which subordination shall be in a form reasonably acceptable to Lessee's construction lender.

5.9 **Where Director Approval Not Required.** Notwithstanding the foregoing, and notwithstanding anything to the contrary in this Article 5, Lessee shall not be required to seek or obtain the approvals of Director described in this Article 5 (including those set forth in Section 5.3) for Alterations (other than the Redevelopment Work) where all of the following conditions are satisfied: (i) the total cost of the project is less than One Hundred Thousand Dollars (\$100,000), adjusted annually to reflect the increase or decrease in the ENR Index from and after the Effective Date (provided, however, that in no event shall such adjustment result in a reduction of the threshold for Director approval to less than One Hundred Thousand Dollars (\$100,000)); (ii) none of the proposed construction activity is structural in nature; and (iii) none of the proposed construction, additions, modifications or changes affect or are visible from the exterior of the Premises; provided, however, that whenever Lessee makes or constructs or permits any improvements in or to the Premises, Lessee shall (a) give written notice thereof (including a description of the work to be done and the permits obtained for such work), and (b) furnish a copy of "as-built" plans upon completion of such work to County.

5.10 **Protection of County.** Nothing in this Lease shall be construed as constituting the consent of County, express or implied, to the performance of any labor or the furnishing of any materials or any specific Improvements, alterations or repairs to the Premises of any part thereof by any contractor, subcontractor, laborer or materialman, nor as giving Lessee or any other person any right, power or authority to act as agent of or to contract for, or permit the rendering of, any services, or the furnishing of any materials, in any such manner as would give rise to the filing of mechanics' liens or other claims against the County's interest in the Premises or County.

5.10.1 **Posting Notices.** County shall have the right at all reasonable times and places to post and, as appropriate, keep posted, on the Premises any notices which County may deem necessary for the protection of County's interest in the Premises from mechanics' liens or other claims. Lessee shall give County at least ten (10) business days prior written notice of the commencement of any work to be done on the Premises under this Article 5, in order to enable County timely to post such notices.

Renovation by no later than December 31, 2032. Director shall have sixty (60) days within which to reasonably approve or disapprove the Subsequent Renovation Plan, or to approve the Subsequent Renovation Plan subject to conditions imposed by Director in its reasonable judgment. Failure of Director to notify Lessee in writing of its approval or disapproval of the Subsequent Renovation Plan shall be deemed Director's disapproval of the Subsequent Renovation Plan. If Director disapproves (or is deemed to have disapproved) the Subsequent Renovation Plan, then within thirty (30) days after written request from Lessee Director shall notify Lessee in writing of the reasons for such disapproval.

Upon Director's approval of the Subsequent Renovation Plan, Lessee shall proceed to satisfy all conditions in this Article 5 to the commencement of the Subsequent Renovation and to commence and complete the Subsequent Renovation in accordance with the Subsequent Renovation Plan and the terms and conditions of this Article 5. Director's approval of the actual plans and specifications for the Subsequent Renovation shall proceed in accordance with the protocol for plan submission and approval set forth in Section 5.3 of this Lease, except that the schematic plan submittal requirements set forth in subsection 5.3.1 shall not be applicable to the extent that the Subsequent Renovation Plan approved by Director satisfies the requirements of such subsection 5.3.1. Lessee's failure to comply with the schedule approved by Director as part of the Subsequent Renovation Plan and/or to meet the construction completion deadline pertaining to the Subsequent Renovation set forth in this Section 5.11 (subject to any Force Majeure Delay) shall, if not cured within the cure period set forth in subsection 13.1.2, constitute an Event of Default. Any dispute as to whether Director has failed to exercise reasonable judgment in the approval or disapproval of the Subsequent Renovation Plan shall be submitted to arbitration pursuant to Article 16 of this Lease. If the arbitrator determines that Director failed to exercise reasonable judgment in the approval or disapproval of the Subsequent Renovation Plan and as a result thereof Lessee is delayed in the completion of the Subsequent Renovation by the required completion date set forth in the first paragraph of this Section 5.11, then the required date for the completion of such Subsequent Renovation shall be extended by the duration of the delay caused by Director's failure to reasonably approve the Subsequent Renovation Plan, provided that the required date for the completion of the Subsequent Renovation shall not be extended beyond the date reasonably required for the completion by Lessee of the Subsequent Renovation.

5.12 **Subsequent Renovation Fund.** Commencing with the month following the month during which the tenth (10th) anniversary of the Effective Date occurs, and continuing each month thereafter until the commencement of the Subsequent Renovation (or if as of the commencement of the Subsequent Renovation there are not sufficient funds in the Subsequent Renovation Fund to pay for all costs of the Subsequent Renovation based on the Subsequent Renovation Plan approved by Director, then continuing until the earlier of (a) the date that there are sufficient funds in the Subsequent Renovation fund to pay for all costs of the Subsequent Renovation, or Lessee provides a lender set-aside letter or other security reasonably acceptable to Director for the balance of any such costs, or (b) the date of the lien-free completion of the Subsequent Renovation), Lessee shall establish and maintain a reserve fund (the "**Subsequent Renovation Fund**") in accordance with the provisions of this Section 5.12 for the purpose of funding a portion of the cost of the Subsequent Renovation. Lessee shall expend funds for the Subsequent Renovation that are at least equal to the amounts in the Subsequent Renovation Fund, but the amount of the Subsequent Renovation Fund shall not limit Lessee's obligation to

Improvements or their major systems, after the completion of the Redevelopment Work ("Permitted Capital Expenditures"). Notwithstanding any contrary provision herein, the Capital Improvement Fund shall not be used to fund any portion of the cost of the Redevelopment Work or the Subsequent Renovation. In addition, Permitted Capital Expenditures shall not include the cost of periodic, recurring or ordinary expenditures, repairs or replacements that keep the buildings or their major systems in an ordinarily efficient operating condition, but that do not significantly add to their value or appreciably prolong their useful life. Permitted Capital Expenditures must constitute capital replacements, improvements or equipment under generally accepted accounting principles consistently applied. Permitted Capital Expenditures shall not include costs for any necessary repairs to remedy any broken or damaged Improvements, all of which costs shall be separately funded by Lessee. By way of example, set forth on Exhibit E attached to this Lease are categories of Permitted Capital Expenditures that qualify as proper costs to be funded from the Capital Improvement Fund. All specific purposes and costs for which Lessee desires to utilize amounts from the Capital Improvement Fund shall be subject to Director's approval, which approval shall not be unreasonably withheld.

The Capital Improvement Fund shall be held in an account established with a reputable financial institution (including Lessee's Encumbrance Holder) acceptable to Director into which deposits shall be made by Lessee (and/or into which Lessee's Encumbrance Holder shall provide funds) pursuant to this Section 5.13. The amounts to be added to the Capital Improvement Fund shall be inclusive of amounts required to be deposited with and held by an Encumbrance Holder, provided that the Encumbrance Holder acknowledges that such amounts are subject to the requirements and shall be made available for the purposes of this Section 5.13.

Commencing on the fifteenth (15th) day of the month following the month during which the CO Date occurs and continuing on or before the fifteenth (15th) day of each month thereafter during the remaining Term, Lessee shall make a monthly deposit to the Capital Improvement Fund in the amount of two percent (2%) of total Gross Receipts for the previous month. All interest and earnings on the Capital Improvement Fund shall be added to the Capital Improvement Fund, but shall not be treated as a credit against the Capital Improvement Fund deposits required to be made by Lessee pursuant to this Section 5.13.

Disbursements shall be made from the Capital Improvement Fund only for costs which have been approved by Director and which satisfy the requirements of this Section 5.13. For the purpose of obtaining Director's prior approval of any Capital Improvement Fund disbursements, Lessee shall submit to Director on an annual calendar year basis a capital expenditure plan for the upcoming year which details the amount and purpose of anticipated Capital Improvement Fund expenditures for which Lessee requests Director's approval, which approval shall not be unreasonably withheld. Any anticipated expenditure set forth in such capital expenditure plan which is approved by Director as an acceptable Capital Improvement Fund disbursement shall be considered pre-approved by Director (but only up to the amount of such expenditure set forth in the annual capital expenditure plan) for the duration of the upcoming year. Lessee shall have the right during the course of each year to submit to Director for Director's approval revisions to the then current capital expenditure plan in effect for such year, or individual expenditures not noted on the previously submitted capital expenditure plan. Prior to the disbursement of any amounts from the Capital Improvement Fund, Lessee shall furnish to Director applicable invoices,

(c) during the third (3rd) and each subsequent year of the required deposits, three percent (3%) of total Gross Receipts for the previous month.

If the First Deposit Month occurs prior to the CO Date, then until the CO Date occurs the monthly deposits to the FF&E Fund shall not be based on actual Gross Receipts, but instead shall be based on the Tenant's projected Gross Receipts (as reasonably approved by County) for the same period following the CO Date assuming that the First Deposit Month had been the first month following the month during which the CO Date occurred. All interest and earnings on the FF&E Fund shall be added to the FF&E Fund, but shall not be treated as a credit against the FF&E Fund deposits required to be made by Lessee pursuant to this Section 5.14.

Disbursements shall be made from the FF&E Fund only for costs which have been approved by Director and which satisfy the requirements of this Section 5.14. For the purpose of obtaining Director's prior approval of any FF&E Fund disbursements, Lessee shall submit to Director on an annual calendar year basis a furniture, fixtures and equipment expenditure plan for the upcoming year which details the amount and purpose of anticipated FF&E Fund expenditures for which Lessee requests Director's approval, which approval shall not be unreasonably withheld. Any anticipated expenditure set forth in such furniture, fixtures and equipment expenditure plan which is approved by Director as an acceptable FF&E Fund disbursement shall be considered pre-approved by Director (but only up to the amount of such expenditure set forth in the annual furniture, fixtures and equipment expenditure plan) for the duration of the upcoming year. Lessee shall have the right during the course of each year to submit to Director for Director's approval revisions to the then current furniture, fixtures and equipment expenditure plan in effect for such year, or individual expenditures not noted on the previously submitted furniture, fixtures and equipment expenditure plan. Prior to the disbursement of any amounts from the FF&E Fund, Lessee shall furnish to Director applicable invoices, evidence of payment and other back-up materials reasonably acceptable to Director concerning the use of amounts from the FF&E Fund.

Amounts in the FF&E Fund shall be expended periodically as necessary for Lessee to comply with the standard of operation for the Premises applicable under this Lease. If County elects to require Lessee to remove the Improvements at the end of the Term and requires Lessee to provide a Removal Security Fund to secure its obligation to perform such removal obligations in accordance with subsection 2.4.2 of this Lease, then Lessee shall have the right to contribute to the Removal Security Fund any amounts in the FF&E Fund that are not (and will not be) required for the purposes of this Section 5.14, as determined by Director in Director's reasonable judgment. If County does not require the removal of the Improvements, and at the end of the Term there are amounts remaining in the FF&E Fund that in Director's reasonable judgment were not required for the purposes of this Section 5.14, then Lessee shall be entitled to the return of such funds.

6. CONDEMNATION.

6.1 Definitions.

6.1.1 Condemnation. "Condemnation" means (1) the exercise by any governmental entity of the power of eminent domain, whether by legal proceedings or

fair market value of the portion of the Premises not so taken to the fair market value of the entire Premises immediately prior to the Partial Taking, but without regard to any diminution in value resulting from the imminent taking. Upon the next Annual Minimum Rent Adjustment Date, as described in subsection 4.2.1.4 above, if any, for the purposes of adjusting the Annual Minimum Rent, all Annual Minimum Rent and Percentage Rent paid by Lessee to County prior to the date of the Partial Taking shall be adjusted, for the purposes of this calculation only, to the proportion that the fair market value of the portion of the Premises which remains after the taking bears to the fair market value of the entire Premises immediately prior to the taking. If the parties cannot agree upon the appropriate Annual Minimum Rent, the matter shall be settled through arbitration in the manner set forth in Article 16 hereof. Any determinations of fair market value made pursuant to this Section 6.5 in connection with any arbitration proceeding shall be predicated upon the "income approach" or "income capitalization approach" to property valuation, as defined in The Dictionary of Real Estate Appraisal and/or The Appraisal of Real Estate, published by the Appraisal Institute or any successor organization (the "**Income Approach**"). All other obligations of Lessee under this Lease, including but not limited to the obligation to pay Percentage Rent, shall remain in full force and effect.

6.6 **Waiver of Code of Civil Procedure Section 1265.130.** Each party waives the provisions of Code of Civil Procedure Section 1265.130 allowing either party to petition the Superior Court to terminate this Lease in the event of a Partial Taking of the Premises.

6.7 **Payment of Award.** Awards and other payments on account of a taking, less costs, fees and expenses incurred in the collection thereof ("**Net Awards and Payments**"), shall be applied as follows:

6.7.1 **Partial Taking Without Termination.** Net Awards and Payments received on account of a Taking other than a total Taking or a Partial Taking which results in termination hereof or a taking for temporary use shall be held by County and shall be paid out to Lessee or Lessee's designee(s), in progress payments, to pay the cost of restoration of the Premises. The balance, if any, shall be divided between County and Lessee pro rata, as nearly as practicable, based upon (1) the then value of County's interest in the Premises (including its interest hereunder) and (2) the then value of Lessee's interest in the remainder of the Term of this Lease including bonus value (for such purposes, the Term of this Lease shall not be deemed to have terminated even if Lessee so elects under Section 6.4). Any determinations of fair market value made pursuant to this Section 6.5 shall be predicated upon the Income Approach. Notwithstanding the foregoing, if County is the condemning authority and the taking pertains only to Lessee's interest, then Lessee shall be entitled to the entire amount of the Net Awards and Payments.

In case of a taking other than a total taking or a taking for temporary use, Lessee shall furnish to County evidence satisfactory to County of the total cost of the restoration required by Section 6.4.

6.7.2 **Taking For Temporary Use.** Net Awards and Payments received on account of a taking for temporary use shall be paid to Lessee; provided, however, that if any portion of any such award or payment is paid by the Condemnor by reason of any

7.1 **Amount and Use.** Lessee shall deliver to and maintain with County a security deposit (the "**Security Deposit**") in an amount equal to three (3) times the Monthly Minimum Rent in effect from time to time during the Term (i.e., adjusted on each Adjustment Date or Renegotiation Date to reflect any change in the Monthly Minimum Rent during the Term of this Lease). If as of an Adjustment Date (or Renegotiation Date, as applicable) Lessee has not at any time during the immediately preceding three (3) year period committed an Event of Default under this Lease, then effective on such Adjustment Date (or Renegotiation Date, as applicable) and continuing until the earlier of the occurrence of an Event of Default or the next Adjustment Date (or Renegotiation Date, as applicable), the amount of the Security Deposit required to be maintained by Tenant shall be reduced to two (2) times the Monthly Minimum Rent placed into effect as of such Adjustment Date (or Renegotiation Date, as applicable).

The Security Deposit shall secure Lessee's obligations pursuant to this Lease, and may be drawn on by County, in whole or in part, to cover (a) delinquent rent not paid by Lessee within any applicable notice and cure period, and (b) any other Events of Default of Lessee under this Lease. The Security Deposit shall be applied at the discretion of County. Lessee shall have the right to maintain the Security Deposit in form of cash or in lieu or replacement of the cash Security Deposit requirement described above, in the form of a certificate of deposit, letter of credit or other approved investment instrument acceptable to County with respect to form, content and issuer. As long as no Event of Default by Lessee exists under the Lease, Lessee shall be entitled to any interest or other earnings which are actually earned on any unapplied portions of the Security Deposit delivered to County in the form of a certificate of deposit or other approved investment instrument (as opposed to cash, on which Lessee shall not be entitled to interest). Provided that no Event of Default then exists under the Lease, at the end of each Lease Year Lessee shall be entitled to a credit for all unexpended interest accruing to Lessee's benefit with respect to the Security Deposit during such Lease Year pursuant to the immediately preceding sentence. Notwithstanding any contrary provision hereof, County shall have the right at any time to apply any accrued but uncredited interest (which accrued during non-Event of Default periods) against delinquent rents and other amounts owed by Lessee under the Lease.

7.2 **Replacement.** In the event that some or all of the Security Deposit is drawn against by County and applied against any delinquent rent not paid by Lessee within any applicable notice or cure period, or against other Events of Default of Lessee hereunder, Lessee shall, within ten (10) days after receipt of written notice of the amount so applied and the reasons for such application, deposit sufficient additional funds with County, or cause the issuer of any letter of credit to reissue the letter of credit, such that Lessee once again maintains a Security Deposit equal to three (3) times the then effective Monthly Minimum Rent. Failure to maintain and replenish the Security Deposit, if not cured within the time period set forth in subsection 13.1.3, shall constitute an Event of Default hereunder.

7.3 **Renewal.** Any letter of credit procured by Lessee and delivered to County shall provide for notice to County by the issuer thereof no less than sixty (60) days prior to the expiration of the term of such letter of credit in the event that the issuer thereof is not irrevocably committed to renew the term of such letter of credit. In the event that, thirty (30) days prior to the expiration of such letter of credit, Lessee has not provided County with satisfactory evidence of its renewal or replacement, or has not provided County with adequate replacement security, County may draw down upon the letter of credit and hold the funds as security for Lessee's

Products/Completed Operations Aggregate: \$20,000,000

Personal and Advertising Injury: \$10,000,000

Each Occurrence: \$10,000,000

Lessee may satisfy the above coverage limits with a combination of primary coverage ("Primary Coverage") and excess liability coverage ("Umbrella Coverage") (as long as (a) Lessee's Primary Coverage is at least One Million Dollars (\$1,000,000) per occurrence, One Million Dollars (\$1,000,000) annual aggregate, and (b) the combination of such Primary Coverage and Umbrella Coverage provides County with the same protection as if Lessee had carried primary coverage for the entire limits and coverages required under this Section 9.1.1.

9.1.2 Automobile Liability insurance (written on ISO form CA 00 01 or its equivalent) with a limit of liability of not less than One Million Dollars (\$1,000,000) of Primary Coverage and One Million Dollars (\$1,000,000) of Umbrella Coverage, for each accident and providing coverage for all "owned", "hired" and "non-owned" vehicles, or coverage for "any auto." During any period of operation of valet parking facilities, Lessee also shall provide Garagekeeper's Legal Liability coverage, (written on ISO form CA 99 37 or its equivalent) with limits of not less than Three Million Dollars (\$3,000,000) for this location.

9.1.3 Workers Compensation and Employers' Liability insurance providing workers compensation benefits, as required by the Labor Code of the State of California and for which Lessee is responsible, and including Employers' Liability coverage with limits of not less than the following:

Each Accident: \$1,000,000

Disease - policy limit: \$1,000,000

Disease - each employee: \$1,000,000

9.1.4 Commercial Property insurance covering damage to the Premises, including improvements and betterments, from perils covered by the Causes-of-Loss Special Form (ISO form CP 10 30), excluding earthquake, and including Ordinance or Law Coverage, written for the full replacement value of the Improvements, with a deductible no greater than \$250,000 or 5% of the property value, which ever is less, and also including business interruption, including loss of rent equal to eighteen (18) months of rent, with proceeds payable to Lessee and County as their interests may appear and utilized for repair and restoration of the Premises and Improvements. Notwithstanding the foregoing, during any period during which no Improvements exist on the Premises or all of the existing Improvements are being demolished in connection with the construction of Redevelopment Work, the obligation to provide insurance under this

Director shall have the discretion to reduce the coverage limits under this clause (b) if appropriate in the judgment of Director based on the nature and scope of the services being provided.

9.1.5.5 Asbestos Liability or Contractors Pollution Liability insurance, if construction requires remediation of asbestos or pollutants, and if such insurance is available. Such insurance shall cover liability for personal injury and property damage arising from the release, discharge, escape, dispersal or emission of asbestos or pollutants, whether gradual or sudden, and include coverage for the costs and expenses associated with voluntary clean-up, testing, monitoring and treatment of asbestos in compliance with governmental mandate or order. If the asbestos or pollutant will be removed from the construction site, asbestos or pollution liability is also required under the contractor's or subcontractor's Automobile Liability Insurance. Contractor shall maintain limits as reasonably required by the County for the Alterations.

9.1.6 If the use of the Premises or Improvements involves any manufacture, distribution or service of alcoholic beverages, Liquor Liability insurance (written on ISO policy form CG 00 33 or 34 or their equivalent) with a liability limit of not less than Five Million Dollars (\$5,000,000) per occurrence and an annual aggregate of Ten Million Dollars (\$10,000,000), which limits may be covered by a combination of Primary Coverage and Umbrella Coverage. If written on a claims made form, the coverage shall also provide an extended two-year reporting period commencing upon the termination or cancellation of the Lease.

9.2 Provisions Pertaining to Property Insurance. The insurance coverage required in Sections 9.1.4 and 9.1.5.1 shall name the County as an additional insured and any Encumbrance Holder as loss payee. Subject to Section 12.8, upon the occurrence of any loss, the proceeds of property and builder's risk insurance shall be held by County in trust for the named insureds as their interests appear, and shall be disbursed by County on a monthly basis to pay for work completed in accordance with then-prevailing industry custom and practice; provided, however, that if the insurance proceeds received with respect to a loss are less than \$500,000 (as adjusted to reflect any increase in the ENR Index during the period from the Effective Date through the date of the loss), the Encumbrance Holder shall have the right to hold and disburse such proceeds to pay the renovation and repair of Improvements in accordance with the terms of the loan agreement or deed of trust with Lessee's Encumbrance Holder. In the event of a loss, Lessee shall be obligated to rebuild or replace the destroyed or damaged buildings, structures, equipment, and Improvements, in accordance with the procedures set forth hereinabove for the initial construction, except as otherwise provided in Article 11 hereof. Subject to Section 12.8, any surplus or proceeds after said rebuilding or replacement shall be distributed to Lessee.

9.3 General Insurance Requirements. Subject to the immediately following grammatical paragraph, a duplicate policy or policies (or certificates of insurance) evidencing the insurance coverage required under this Article 9, in such form as shall be reasonably acceptable to County, shall be filed with Director no later than the Effective Date, provided that the evidence of the insurance coverage required under Section 9.1.5 shall be required to be delivered by Lessee prior to the commencement of any Alterations. All certificates of insurance shall (a)

notice to County and all Encumbrance Holders or ten (10) business days in case of cancellation for failure to pay the premium;

(h) that the commercial general liability insurance shall apply separately to each insured against whom a claim is made, except with respect to the overall limits of said insurer's liability; and,

(i) that the property and commercial general liability insurance policies shall contain no special limitations on the scope of protection afforded to the additional insureds, and no failure to comply with the reporting provisions of such policies shall affect the coverage afforded to such additional insureds.

9.5 Failure to Procure Insurance. If Lessee fails to procure or renew the herein required insurance and does not cure such failure within five (5) business days after written notice from County, in addition to the other rights and remedies provided hereunder, County may, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith. All monies so paid by County shall be repaid by Lessee, with interest thereon at the Applicable Rate, to County within five (5) business days after Lessee's receipt of written demand therefor.

9.6 Adjustment to Amount of Liability Coverage. The amounts of liability insurance required under Section 9.1.1, 9.1.2 and 9.1.3 shall be subject to renegotiation as of each fifth (5th) anniversary of the Effective Date (each, an "Insurance Renegotiation Date"). If County and Lessee cannot agree upon the amount of insurance by the sixtieth (60th) day preceding an Insurance Renegotiation Date, the matter shall be resolved by binding arbitration in accordance with Article 16. In no event shall the amounts of liability insurance be decreased as a result of such renegotiation or arbitration. Following such renegotiation or arbitration, the parties shall execute an amendment to this Lease setting forth the renegotiated insurance provisions or the arbitration judgment, as appropriate.

9.7 Notification of Incidents, Claims or Suits. Lessee shall notify County of any accident or incident on or about the Premises which involves injury or property damage over Fifty Thousand Dollars (\$50,000.00) in the aggregate and pursuant to which a claim against Lessee and/or County is made or threatened. Such notification shall be made in writing within 72 hours after Lessee first becomes aware of the claim or threatened claim.

10. MAINTENANCE AND REPAIR; DAMAGE AND DESTRUCTION.

10.1 Lessee's Maintenance and Repair Obligations. Lessee shall maintain the Premises, including paved or unpaved ground surfaces and Improvements thereon (including the Promenade, but excluding the Excluded Conditions), in conformance with the Minimum Standards regarding the use and occupancy of commercial (including hotel) projects in Marina del Rey (such as the Premises) as revised from time to time by County in a manner consistent with commercially reasonable maintenance standards applicable to other comparable commercial projects in Marina del Rey (the "Maintenance Standard"). Any dispute as to whether revisions to the Maintenance Standard adopted by the County from time to time pursuant to the immediately preceding sentence is commercially reasonable shall be submitted to arbitration

the prosecution of the completion of such cure in a manner and with such diligence that will effectuate the cure in as short a period as reasonably possible, then the cure period specified in County's deficiency notice shall be extended for such additional time as necessary to complete the cure in as short a period as reasonably possible.

For purposes of determining the number of items of deficiency set forth in a deficiency notice received from the County, County shall reasonably identify the separate deficiencies so as not to unfairly increase the daily amount payable under this Section 10.2 by separating the work into unreasonably particularized items (e.g., the requirement to paint the exterior of a building shall not be split into individual deficiency items for the painting of each individual door, window or other component of such building). If a cited deficiency is not health or safety related and does not otherwise constitute an emergency, and if in the reasonable and good faith business judgment of Lessee the deficiency notice was erroneously issued by County, then Lessee shall have the right to contest such deficiency notice by written notice to Director within five (5) business days after the date the deficiency notice is received by Lessee. If Lessee files any such contest with Director, then Director shall have the right, in the exercise of Director's discretion, to consider such contest. If Lessee's contest is made on a reasonable and good faith basis, then the cure period for the deficiency notice shall be tolled during the period between the date Director receives written notice of such contest and continuing until Director notifies Lessee in writing that either Director denies Lessee's contest or that Director has determined not to consider such contest, and the daily penalty set forth above in this Section 10.2 shall not be applicable during the period that the cure period is tolled. The One Hundred Dollars (\$100) per diem amount set forth in this Section 10.2 shall be adjusted every three (3) years during the remaining Lease Term on each third (3rd) anniversary of the Effective Date to reflect any change in the Consumer Price Index over the three (3) year period immediately preceding each such adjustment. If Lessee fails to pay any amounts payable by Lessee under this Section 10.2 within ten (10) days after written notice from County, then County shall have the right to draw on the Security Deposit to cover such unpaid amounts.

10.3 Option to Terminate for Uninsured Casualty. In the event of any damage to or destruction of the Premises, or any Improvements located thereon (other than the Excluded Conditions, except to the extent damage thereto is caused by the Lessee, its agents, employees, subtenants or contractors, or by Improvements constructed by or on behalf of Lessee), Lessee shall, except as otherwise expressly provided in this Section 10.3, promptly (taking into consideration the necessity of obtaining approvals and permits for such reconstruction) repair and/or restore such Improvements to their condition existing prior to the damage or destruction. Except as otherwise expressly provided in this Section 10.3, such obligation to repair and restore is absolute, and is in no way dependent upon the existence or availability of insurance proceeds. Repair and restoration of any damage or destruction shall take place in accordance with the provisions of Article 5. Notwithstanding the foregoing, Lessee shall have the option to terminate this Lease and be relieved of the obligation to restore the Improvements on the Premises where all or substantially all of the Improvements on the Premises (other than the Excluded Conditions) are substantially damaged or destroyed and such damage or destruction resulted from a cause not required to be insured against by this Lease (an "Uninsured Loss"), and where all of the following occur:

about the Premises. Any entry by County onto the Premises pursuant to this Section 10.7, shall be made in accordance with the following requirements: (i) prior to entry onto the Premises County shall cause each of its contractors to provide to Lessee evidence that such contractor has procured commercial general liability insurance coverage pertaining to such contractor's activities on the Premises, which insurance coverage shall be consistent with County's insurance requirements generally applicable to County contractors, and shall name Lessee as an additional insured; (ii) County's contractors shall comply with industry standard safety requirements; and (iii) County shall repair, or cause its contractors to repair, any damage to the Premises caused by the activities of County and/or its contractors on the Premises pursuant to this Section 10.7.

10.8 **Notice of Damage.** Lessee shall give prompt notice to County of any fire or material damage affecting the Premises from any cause whatsoever.

10.9 **Waiver of Civil Code Sections.** The parties' rights shall be governed by this Lease in the event of damage or destruction. The parties hereby waive the provisions of California Civil Code Section 1932 and any other provisions of law which provide for contrary or additional rights.

11. **ASSIGNMENT AND SUBLEASE.**

11.1 **Subleases.**

11.1.1 **Definition.** The term "**Sublease**" shall mean any lease, license, permit, concession or other interest in the Premises (including, without limitation, the Improvements), or a right to use the Premises or a portion thereof, which is conveyed or granted by Lessee to a third party, and which constitutes less than the unrestricted conveyance of the entire Lessee's interest under this Lease. "**Sublessee**" shall be the person or entity to whom such right to use is conveyed by a Sublease. A Sublease which grants or conveys to the Sublessee the right to possess or use all or substantially all of the Premises is sometimes referred to in this Lease as a "**Major Sublease**" and the Sublessee under such agreement is sometimes referred to in this Lease as a "**Major Sublessee**".

11.1.2 **Approval Required.** At least thirty (30) days prior to the proposed effective date of any Sublease that is not a Major Sublease, or of any assignment or material amendment of such Sublease, Lessee shall submit a copy of such Sublease (or amendment or assignment thereof) to Director for approval, which approval shall not be unreasonably withheld. To the extent practical, Director shall approve or disapprove said proposed Sublease, amendment or assignment within thirty (30) days after receipt thereof. In no event, however, shall any such Sublease, amendment or assignment be made or become effective without the prior approval of Director. Each such Sublease shall specifically provide that the Sublessee shall comply with all of the terms, covenants, and conditions of this Lease applicable to the portion of the Premises subject to the Sublease. If Director disapproves a Sublease, Director shall notify Lessee in writing of the reason or reasons for such disapproval.

11.1.3 **Major Sublease.** Lessee shall enter into a Major Sublease only with a reputable owner or manager of comparable hotel facilities such as exist on the Premises.

11.2.2. **Involuntary Transfers Prohibited.** Except as otherwise specifically provided in this Lease, neither this Lease nor any of the Lessee's interest in this Lease (as opposed to ownership interests in Lessee itself) shall be assignable or transferable in proceedings in attachment, garnishment, or execution against Lessee, or in voluntary or involuntary proceedings in bankruptcy or insolvency or receivership taken by or against Lessee, or by any process of law including proceedings under the Bankruptcy Act.

11.2.3 **Procedure.** Requests for approval of any proposed assignment shall be processed in accordance with the following procedures:

11.2.3.1 Prior to entering into any agreement requiring the approval of County pursuant to Sections 11.1 or 11.2, Lessee (or the entity seeking approval of such assignment) shall notify County and deliver to County all information relevant to the proposed assignment, including without limitation any term sheets, letters of intent, draft Major Subleases, any other documents which set forth any proposed agreement regarding the Premises and the information set forth in subsection 11.2.3.5. County will evaluate the information provided to it and County may request additional information as may be reasonably necessary to act on the request. Under no circumstances will County formally discuss an assignment with any proposed assignee prior to reviewing the proposal with Lessee.

11.2.3.2 In completing its review of the proposal and granting or withholding its consent thereto, County will not be bound by any deadline contained in any proposed assignments, Major Subleases, escrow instructions or other agreements to which County is not a party.

11.2.3.3 Lessee acknowledges that the time needed for County to review a proposed assignment depends on many factors, including without limitation the complexity of the proposed transaction, the financial and other information submitted for review, and the workload of County's personnel. Notwithstanding the foregoing, County shall act as promptly as governmental processes permit in processing and acting upon a requested approval of an assignment of Lessee's interest under this Article 11.

11.2.3.4 Lessee shall be required to reimburse County for its Actual Costs incurred in connection with the proposed assignment, whether or not County ultimately grants its approval to the proposed assignment (without duplication with any Administrative Charge payable under Section 4.6.

11.2.3.5 Lessee or the proposed assignee shall provide County with sufficient information for County to determine if the public interest will be served by approving the proposed transaction. The information that must be provided includes, but shall not be limited to, the following:

(a) **Nature of the Assignee.** Full disclosure is required in accordance with this Lease and County's applicant disclosure policy then in effect. Additionally, a flowchart identifying the chain of ownership of the assignee and its decision-making

(f) **Cure of Defaults.** County shall be provided with the proposed assignee's specific plans to cure any and all delinquencies under this Lease which may be identified by County, whether identified before or after the date of the proposed assignment.

(g) **Prospectus Materials.** County shall be provided with any materials distributed to third parties relating to the business of the proposed assignee to be conducted on, from or relating to the Premises.

(h) **Other Information.** County shall be provided with a clear description of the terms and conditions of the proposed assignment, including a description of the proposed use of the Premises and any proposed alterations or improvements to the Premises. Additionally, County shall be provided with any and all other information which it reasonably requests of Lessee to assist in its review of the proposed transaction, including without limitation materials pertinent to the issues noted in this subsection to the extent that they exist, such as escrow instructions, security agreements, personal property schedules, appraisals, market reports, lien releases, UCC Statements, preliminary title reports, management agreements affecting the Premises, contracts in excess of \$25,000 affecting the Premises, schedules of pending or threatened litigation, and attorneys' closing opinions relating to Lessee, the proposed assignee or the Premises. County shall endeavor to keep the foregoing materials confidential, subject to the Public Records Act and other Applicable Laws.

11.2.3.6 **Nondisturbance.** At the request of Lessee, County shall agree to execute a subordination, nondisturbance and attornment agreement and a ground lessor's estoppel certificate on commercially reasonable terms in favor of any Major Sublessee.

11.2.3.7 **Final Documents.** Prior to granting its approval over any proposed assignment, County shall be provided with an executed Assignment and Acceptance of Assignment in form and content as approved or supplied by the County. Ten (10) copies of each must be submitted to County, of which five (5) shall be signed originals and properly acknowledged.

11.2.4 **County Right to Recapture.** If Lessee proposes to assign its interest in this Lease or the Premises after January 1, 2023, or proposes to enter into any Major Sublease affecting the Premises after January 1, 2023 (with either such proposed transaction herein referred to as a "**Proposed Transfer**"), it shall provide County with written notice of such desire and the sale price ("**Lessee Sale Price**") at which it is willing to consummate the Proposed Transfer. Within thirty (30) days thereafter, County shall provide Lessee with written notification as to whether it has elected to acquire an option to purchase the interest subject to the Proposed Transfer. During said thirty (30) day period, Lessee may continue to market the interest subject to the Proposed Transfer, provided that such interest is offered subject to County's rights as provided herein. In the event that, prior to the expiration of said thirty (30) day period, County has given notice to Lessee that it has elected to acquire said option, County shall have an assignable option to purchase the interest subject to the Proposed Transfer ("**County Option**") at the Lessee Sale Price. Such County Option shall have a term of five (5) calendar months

with any uncompleted audit by County, in lieu of a provisional credit for such amounts, Lessee may provide County with a letter of credit or other security satisfactory to County to secure the payment of such unpaid amounts when finally determined by County. During the term of the County Option, Lessee shall cause to be available to County all books and records reasonably necessary in order to determine the amount of such unpaid Annual Minimum Rent, Percentage Rent, and other amounts payable under the Lease. In the event that County or its assignee exercises the County Option, but the transaction fails to close due to a failure of the parties to agree upon an appropriate allowance for such unpaid Annual Minimum Rent, Percentage Rent, and other amounts or appropriate security for the payment thereof, then County shall have no obligation to pay or credit to Lessee the County Option Price.

11.3 **Terms Binding Upon Successors, Assigns and Sublessees.** Except as otherwise specifically provided for herein, each and all of the provisions, agreements, terms, covenants, and conditions herein contained to be performed, fulfilled, observed, and kept by Lessee hereunder shall be binding upon the heirs, executors, administrators, successors, and assigns of Lessee, and all rights, privileges and benefits arising under this Lease in favor of Lessee shall be available in favor of its heirs, executors, administrators, successors, and assigns. Notwithstanding the foregoing, no assignment or subletting by or through Lessee in violation of the provisions of this Lease shall vest any rights in any such assignee or Sublessee. Any approved assignment of this Lease shall release the assignor of all liability arising due to actions or omissions on or after the effective date of such assignment, provided the assignee assumes all of such liability, including without limitation the obligation of assignee to cure any defaults and delinquencies under this Lease and to pay County Percentage Rent and any other amounts attributable to the period prior to the assignment, but not discovered by County or the assignee until after the assignment; provided, further, the assignor shall not be relieved of any liability for the payment of the Administrative Charge or the required portion of any Net Proceeds Share or Net Refinancing Proceeds which arise upon such assignment as provided herein.

11.4 **Family Transfers.** Notwithstanding any contrary provision of this Article 11, the County's approval shall not be required, nor shall the County's rights of recapture under subsection 11.2.4 be applicable, with respect to any transfer of ownership interests in Lessee or in constituent entities of Lessee, if such transfer is to a member of the immediate family of the transferor (or to a trust for the benefit of a member of the immediate family of the transferor) for estate planning purposes, whether such transfer is the result of gift, devise, intestate succession or operation of law.

12. **ENCUMBRANCES.**

12.1 **Financing Events.**

12.1.1 **Definitions.** For the purposes of this Lease, including without limitation the provisions of Sections 4.6 through 4.8 hereof: (i) a "**Financing Event**" shall mean any financing or refinancing consummated by Lessee or by the holders of partnership interests or other direct or indirect ownership interests in Lessee (collectively, "**Ownership Interests**"), whether with private or institutional investors or lenders, where such financing or refinancing is an Encumbrance (as defined below); for purposes of

benefit of and shall be binding upon any holder of Ownership Interests with respect to any proposed Financing Event involving Ownership Interests.

12.2 Consent Requirements In The Event of a Foreclosure Transfer.

12.2.1 Definitions. As used herein, a "Foreclosure Transfer" shall mean any transfer of the entire leasehold estate under this Lease or of all of the Ownership Interests in Lessee pursuant to any judicial or nonjudicial foreclosure or other enforcement of remedies under or with respect to an Encumbrance, or by voluntary deed or other transfer in lieu thereof. A "Foreclosure Transferee" shall mean any transferee (including without limitation an Encumbrance Holder) which acquires title to the entire leasehold estate under this Lease or to all of the Ownership Interests in Lessee pursuant to a Foreclosure Transfer. An "Equity Foreclosure Transferee" shall mean a Foreclosure Transferee whose acquired interest consists of all of the Ownership Interests in Lessee.

12.2.2 Foreclosure Transfer. The consent of County shall not be required with respect to any Foreclosure Transfer.

12.2.3 Subsequent Transfer By Encumbrance Holder. For each Foreclosure Transfer in which the Foreclosure Transferee is an Encumbrance Holder, with respect to a single subsequent transfer of this Lease or the Ownership Interests (as applicable) by such Encumbrance Holder to any third party, (i) County's consent to such transfer shall be required, but shall not be unreasonably withheld or delayed, and the scope of such consent (notwithstanding anything in this Lease to the contrary) shall be limited to County's confirmation (which must be reasonable) that the Lessee following such transfer has sufficient financial capability to perform its remaining obligations under this Lease as they come due, along with any obligation of Lessee for which the Foreclosure Transferee from whom its receives such transfer is released under subsection 12.3.1 below, and (ii) such transferee (other than a transferee of Ownership Interests) shall expressly agree in writing to assume and to perform all of the obligations under this Lease, other than Excluded Defaults (as defined below). For clarification purposes, the right to a single transfer under this Section shall apply to each Foreclosure Transfer in which the Foreclosure Transferee is an Encumbrance Holder, so that there may be more than one "single transfer" under this Section.

12.3 Effect of Foreclosure. In the event of a Foreclosure Transfer, the Encumbrance Holder shall forthwith give notice to County in writing of such transfer setting forth the name and address of the Foreclosure Transferee and the effective date of such transfer, together with a copy of the document by which such transfer was made.

12.3.1 Any Encumbrance Holder which is a commercial bank, savings bank, savings and loan institution, insurance company, pension fund, investment bank, opportunity fund, mortgage conduit, real estate investment trust, commercial finance lender or other similar financial institution which ordinarily engages in the business of making, holding or servicing commercial real estate loans, including any affiliate thereof (an "Institutional Lender"), shall, upon becoming a Foreclosure Transferee (other than an Equity Foreclosure Transferee), become liable to perform the full obligations of

Holder (as more fully explained in Section 12.2.3), so that there may be more than one "single subsequent transfer" benefited by this Section.

12.3.6 In the event that an Institutional Lender becomes a Foreclosure Transferee, all obligations with respect to the construction and renovation work described in Sections 5.1, 5.11 or 5.14 above (other than any obligations to make deposits into the Subsequent Renovation Fund) shall be tolled for a period of time, not to exceed twelve months, until such Institutional Lender completes a subsequent transfer of its foreclosed interest in the Lease or Ownership Interests, provided that such Institutional Lender is making commercially reasonable and diligent efforts to market and sell its foreclosed interest. Nothing in this Section 12.3.6 shall be construed as a limit or outside date on any cure periods provided to Encumbrance Holders under this Lease.

12.3.7 Following a Foreclosure Transfer with respect to all of the Ownership Interests in Lessee, (i) any and all rights, privileges and/or liability limitations afforded to Foreclosure Transferees in this Article 12 or any other provision of this Lease shall also be afforded to Lessee from and after such Foreclosure Transfer, to the same extent as if the Foreclosure Transferee had acquired the leasehold interest of Lessee directly and became the Lessee under this Lease, and (ii) if the Foreclosure Transferee was also an Equity Encumbrance Holder, then any and all rights, privileges and/or liability limitations afforded to Foreclosure Transferees who are Encumbrance Holders in this Article 12 or any other provision of this Lease shall also be afforded to Lessee from and after such Foreclosure Transfer, to the same extent as if the Foreclosure Transferee had acquired the leasehold interest of Lessee directly and became the Lessee under this Lease.

12.4 **No Subordination.** County's rights in the Premises and this Lease, including without limitation County's right to receive Annual Minimum Rent and Percentage Rent, shall not be subordinated to the rights of any Encumbrance Holder. Notwithstanding the foregoing, an Encumbrance Holder shall have all of the rights set forth in the security instrument creating the Encumbrance, as approved by County in accordance with subsection 12.1.2, to the extent that such rights are not inconsistent with the terms of this Lease, including the right to commence an action against Lessee for the appointment of a receiver and to obtain possession of the Premises under and in accordance with the terms of said Encumbrance, provided that all obligations of Lessee hereunder shall be kept current, including but not limited to the payment of rent and curing of all defaults or Events of Default hereunder (other than Excluded Defaults or as otherwise provided herein).

12.5 **Modification or Termination of Lease.** This Lease shall not be modified or amended without the prior written consent in its sole discretion of each then existing Encumbrance Holder with respect to Lessee's entire leasehold interest in this Lease or all of the Ownership Interests in Lessee. Further, this Lease may not be surrendered or terminated (other than in accordance with the provisions of this Article 12) without the prior written consent of each such Encumbrance Holder in its sole discretion. No such modification, amendment, surrender or termination without the prior written consent of each such then existing Encumbrance Holder shall be binding on any such Encumbrance Holder or any other person who acquires title to its foreclosed interest pursuant to a Foreclosure Transfer.

Encumbrance Holder or Major Sublessee commences a cure within the initial cure period and thereafter continues to use due diligence to perform whatever acts may be required to cure the particular default. In the event Lessee commences to cure the default within Lessee's applicable cure period and thereafter fails or ceases to pursue the cure with due diligence, the Encumbrance Holder's and Major Sublessee's initial cure period shall commence upon the later of the end of Lessee's cure period or the date upon which County notifies the Encumbrance Holder and/or Major Sublessee that Lessee has failed or ceased to cure the default with due diligence.

(2) With respect to an Encumbrance Holder, but not a Major Sublessee, if before the expiration of the initial cure period, said Encumbrance Holder notifies County of its intent to commence foreclosure of its interest, and within sixty (60) days after the mailing of said notice, said Encumbrance Holder (i) actually commences foreclosure proceedings and prosecutes the same thereafter with due diligence, the initial cure period shall be extended by the time necessary to complete such foreclosure proceedings, or (ii) if said Encumbrance Holder is prevented from commencing or continuing foreclosure proceedings by any bankruptcy stay, or any order, judgment or decree of any court or regulatory body of competent jurisdiction, and said Encumbrance Holder diligently seeks release from or reversal of such stay, order, judgment or decree, the initial cure period shall be extended by the time necessary to obtain such release or reversal and thereafter to complete such foreclosure proceedings. Within thirty (30) days after a Foreclosure Transfer is completed, the Foreclosure Transferee shall (if such default has not been cured) commence to cure, remedy or correct the default and thereafter diligently pursue such cure until completed in the same manner as provided in subsection (a) above. The Encumbrance Holder shall have the right to terminate its foreclosure proceeding, and the extension of any relevant cure period shall lapse, in the event of a cure by Lessee.

12.7 New Lease.

12.7.1 Obligation to Enter Into New Lease. In the event that this Lease is terminated by reasons of bankruptcy, assignment for the benefit of creditors, insolvency or any similar proceedings, operation of law, an Excluded Default or other event beyond the reasonable ability of an Encumbrance Holder to cure or remedy, or if the Lease otherwise terminates for any reason, County shall, upon the written request of any Encumbrance Holder with respect to Lessee's entire leasehold estate under this Lease or all of the Ownership Interests in Lessee (according to the priority described below if there are multiple Encumbrance Holders), enter into a new lease (which shall be effective as of the date of termination of this Lease) with the Encumbrance Holder or an affiliate thereof for the then remaining Term of this Lease on the same terms and conditions as shall then be contained in this Lease, provided that the Encumbrance Holder cures all then existing monetary defaults under this Lease, and agrees to commence a cure of all then existing non-monetary Events of Default within sixty (60) days after the new lease is entered into, and thereafter diligently pursues such cure until completion. In no event, however, shall the Encumbrance Holder be obligated to cure any Excluded Defaults. County shall notify the most junior Encumbrance Holder of a termination described in this Section 12.7 within thirty (30) days after the occurrence of such termination, which notice shall state

12.10 **Fee Mortgages and Encumbrances.** Any mortgage, deed of trust or other similar encumbrance granted by County upon its fee interest in the Premises shall be subject and subordinate to all of the provisions of this Lease and to all Encumbrances. County shall require each such fee encumbrance holder to confirm the same in writing (in a form reasonably approved by each Encumbrance Holder or its title insurer) as a condition to granting such encumbrance, although the foregoing subordination shall be automatic and self-executing whether or not such written confirmation is obtained.

12.11 **No Merger.** Without the written consent of each Encumbrance Holder, the leasehold interest created by this Lease shall not merge with the fee interest in all or any portion of the Premises, notwithstanding that the fee and leasehold interests are held at any time by the same person or entity.

12.12 **Rights of Encumbrance Holders With Respect to Reversion.** As used in this Section 12.12, the "Reversion" refers to the automatic amendment of this Lease described in subsection 5.6.3 whereby the terms and conditions of this Lease are automatically amended in accordance with the Reversion Amendment described in such subsection 5.6.3, and the "Reversion Condition" refers to the condition that causes the Reversion, namely the failure of Lessee to substantially complete the Redevelopment Work on or before the Required Completion Date. Notwithstanding anything in subsection 5.6.3 of this Lease to the contrary, so long as an Encumbrance Holder exists with respect to Lessee's entire leasehold interest in this Lease or all of the Ownership Interests in Lessee, the Reversion shall not occur unless and until (i) the County has given written notice of the occurrence of the Reversion Condition to each such Encumbrance Holder in accordance with subsection 12.6.2 (which notice shall describe the Reversion Condition that has occurred, and shall include the following statement in all capital and bold letters: **"YOUR FAILURE TO COMMENCE A CURE OF THE DEFAULT DESCRIBE IN THIS NOTICE WITHIN 60 DAYS OF YOUR RECEIPT OF THIS NOTICE, AND TO THEREAFTER PURSUE SUCH CURE TO COMPLETION IN ACCORDANCE WITH THE PROVISIONS OF SUBSECTION 12.6.3(b) OF THE LEASE APPLICABLE TO NONMONETARY DEFAULTS, WILL RESULT IN AN AUTOMATIC AMENDMENT AND REVERSION OF THE TERMS OF THE LEASE IN ACCORDANCE WITH THE REVERSION AMENDMENT DESCRIBED IN SUBSECTION 5.6.3 OF THE LEASE"**), and (ii) no such Encumbrance Holder commences a cure of the default within 60 days of its receipt of such notice and thereafter pursues such cure to completion in accordance with the provisions of subsection 12.6.3(b) of the Lease applicable to nonmonetary defaults. Further, in the event that a Reversion occurs, such Reversion shall be subject to the "new lease" provisions of Section 12.7 of the Lease (and in such event the Reversion shall be deemed a "termination" of this Lease solely for purposes of Section 12.7 and the "new lease" to be entered into pursuant to Section 12.7 shall mean a new lease on the same terms as this Lease, not the Existing Lease).

12.13 **Acceleration of Extension Fee.** So long as (i) no Event of Default exists based on nonpayment of an individual Extension Fee Installment Payment payable by Lessee pursuant to Section 2.2. of this Lease and Section 4.2 of the Option Agreement (even if any other Event of Default exists that is not based on nonpayment of an individual Extension Fee Installment Payment), or (ii) if an Event of Default exists based on nonpayment of an individual Extension Fee Installment Payment, an Encumbrance Holder, Foreclosure Transferee or the single

operations in a portion of the Premises by a Sublessee shall not constitute an Event of Default under this Section 13.1.4 if Lessee uses its best efforts to recover possession of such portion of the Premises from such Sublessee and to re-sublease such portion of the Premises to another Sublessee as soon as possible; provided, further, that except as provided below operations in such portion of the Premises in accordance with this Lease must recommence no later than one hundred eighty (180) days following the date that operations in such portion of the Premises first terminated. The one hundred eighty (180) day period set forth in the immediately preceding sentence shall be tolled for delays incurred by Lessee beyond such one hundred eighty (180) day period in recovery of possession of the Premises due to the Sublessee's bankruptcy or contest of unlawful detainer proceedings, as long as Lessee diligently continues to prosecute its action to recover possession of the Premises. In addition, notwithstanding any contrary provision of this subsection 13.1.4, an Event of Default shall not be triggered under this subsection 13.1.4 due to the termination of operations by a Sublessee as long as (i) Lessee diligently attempts to re-open the subject space as soon as reasonably possible and the subject space is re-opened for business not later than three hundred sixty five (365) days after the date that such operations were closed, and (ii) during any period between the end of the one hundred eighty (180) day period set forth above in this subsection 13.1.4 (as such period may be extended as provided above) and the date that the subject portion of the Premises is re-opened for business, Lessee pays County Percentage Rent for such space based upon an imputed Gross Receipts for such space equal to the actual Gross Receipts for such space during the one year period prior to the closure of business for such space.

Any notice required to be given by County pursuant to subsections 13.1.1 through and including 13.1.3 shall be in addition to, and not in lieu of, any notice required under Section 1161 of the California Code of Civil Procedure.

13.2 **Limitation on Events of Default.** Lessee shall not be considered in default as to any provision of this Lease when such default is the result of or pursuant to, any process, order, or decree of any court or regulatory body of competent jurisdiction, or any other circumstances which are physically impossible to cure provided Lessee uses due diligence in pursuing whatever is required to obtain release from or reversal of such process, order, or decree or is attempting to remedy such other circumstances preventing its performance.

13.3 **Remedies.** Upon the occurrence of an Event of Default, and subject to the rights of any Encumbrance Holder or Major Sublessee to cure such Event of Default as provided in Section 12.6 hereof, County shall have, in addition to any other remedies in law or equity, the following remedies which are cumulative:

13.3.1 **Terminate Lease.** County may terminate this Lease by giving Lessee written notice of termination. On the giving of the notice, all Lessee's rights in the Premises and in all Improvements shall terminate. Promptly after notice of termination, Lessee shall surrender and vacate the Premises and all Improvements in broom-clean condition, and County may re-enter and take possession of the Premises and all remaining Improvements and, except as otherwise specifically provided in this Lease, eject all parties in possession or eject some and not others, or eject none. Termination under this subsection shall not relieve Lessee from the payment of any sum then due to

such default and (2) the amount expended by County to cure such default, plus one thousand dollars (\$1,000). To the extent practicable, County shall give any Encumbrance Holders or Major Sublessees the reasonable opportunity to cure Lessee's default prior to County's expenditure of any amounts thereon.

13.6 **Default by County.** County shall be in default in the performance of any obligation required to be performed by County under this Lease if County has failed to perform such obligation within thirty (30) days after the receipt of notice from Lessee specifying in detail County's failure to perform; provided, however, that if the nature of County's obligation is such that more than thirty (30) days are required for its performance, County shall not be deemed in default if it shall commence such performance within thirty (30) days and thereafter diligently pursues the same to completion. Lessee shall have no rights as a result of any default by County until Lessee gives thirty (30) days notice to any person or entity having a recorded security interest in County's fee title to the Premises whose identity and address have been disclosed in writing to Lessee. Such person or entity shall then have the right to cure such default, and County shall not be deemed in default if such person or entity cures such default within thirty (30) days after receipt of notice of the default, or such longer time as may be reasonably necessary to cure the default. Notwithstanding anything to the contrary in this Lease, County's liability to Lessee for damages arising out of or in connection with County's breach of any provision or provisions of this Lease shall not exceed the value of County's equity interest in the Premises and its right to insurance proceeds in connection with the policies required under Article 9 hereof. During any period that County is in default of its obligation to pay a sum of money to Lessee, any amount of money that may be owed by Lessee to County (but not in excess of the undisputed amount of money owed by County to Lessee for which County is in default) shall not accrue interest or late charges during such period as County remains in default of its obligation to pay Lessee such sum of money.

14. **ACCOUNTING.**

14.1 **Maintenance of Records and Accounting Method.** In order to determine the amount of and provide for the payment of the Annual Minimum Rent, Percentage Rent, Administrative Charge, Net Proceeds Share, Net Refinancing Proceeds and other sums due under this Lease, Lessee and all Sublessees shall at all times during the Term of this Lease, and for thirty six (36) months thereafter, keep, or cause to be kept, locally, to the reasonable satisfaction of Director, true, accurate, and complete records and double-entry books of account for the current and five (5) prior Accounting Years, such records to show all transactions relative to the conduct of operations, and to be supported by data of original entry. Such records shall detail transactions conducted on or from the Premises separate and apart from those in connection with Lessee's (or sublessee's or licensee's, as appropriate) other business operations, if any. With respect to the calculation of Gross Receipts and the preparation of the reports and maintenance of records required herein, Lessee shall utilize either: (i) the accrual method of accounting, or (ii) a modified accrual method of accounting, modified in that (A) expenses are accrued on an approximate basis each month during the fiscal year with full accrual treatment for the full fiscal year financial statements, and (B) Gross Receipts are reported monthly on a cash basis with full reconciliation to accrual treatment on the annual statement of Gross Receipts, and (C) depreciation is calculated on a tax basis rather than a GAAP basis.

the event that any audit discloses a discrepancy in County's favor of greater than two percent (2%) of the revenue due County for the period audited, then Lessee shall pay County audit contract costs, together with the amount of any identified deficiency, with interest thereon and Late Fee provided by Section 4.5.

14.6 **Additional Accounting Methods.** County may require the installation of any additional accounting methods or machines which are typically used by major hotel management companies and which County reasonably deems necessary if the system then being used by Lessee does not adequately verify sales for audit or customer receipt purposes.

14.7 **Accounting Year.** The term "Accounting Year" as used herein shall mean each calendar year during the Term.

14.8 **Annual Financial Statements.** Within six (6) months after the end of each Accounting Year, or at Lessee's election, after the completion of Lessee's fiscal year, Lessee shall furnish to County a set of audited and certified financial statements prepared by a Certified Public Accountant who is a member of the American Institute of Certified Public Accountants and is satisfactory to County, setting forth Lessee's financial condition and the result of Lessee's operations for such Accounting Year and shall include a certification of and unqualified opinion concerning Lessee's Gross Receipts (including a breakdown by category). All financial statements prepared by or on behalf of Lessee shall be prepared in a manner that permits County to determine the financial results of operations in connection with Lessee's activities at, from or relating to the Premises, notwithstanding that Lessee may have income and expenses from other activities unrelated to its activities on the Premises.

14.9 **Accounting Obligations of Sublessees.** Lessee shall cause all sublessees, licensees, concessionaires and others conducting business operations on or from the Premises to comply with all terms of this Article 14 with respect to the maintenance, form, availability and methodology of accounting records.

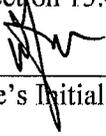
14.10 **Inadequacy of Records.** In the event that Lessee or its sublessees, licensees or concessionaires, as appropriate, fails to keep the records required by this Article 14 such that a Certified Public Accountant is unable to issue an unqualified opinion as to Gross Receipts, such failure shall be deemed a breach of this Lease by Lessee. In addition to the other remedies available to County at law or equity as a result of such breach, County may prepare a calculation of the Percentage Rent payable by Lessee during the period in which the accounting records were inadequately maintained. Such calculation may be based on the past Gross Receipts levels on or from the Premises, the past or present level of Gross Receipts experienced by tenants of comparable leaseholds in Marina del Rey with comparable business operations, or any other method as reasonably determined by Director and shall utilize such methodology as Director deems reasonable. Within five (5) days after receipt of County's determination of Percentage Rent due, if any, Lessee shall pay such Percentage Rent, together with a late fee of six percent (6%) and interest to the date of payment at the Applicable Rate from the date upon which each unpaid installment of Percentage Rent was due, together with County's Actual Cost in connection with the attempted audit of the inadequate records and the reconstruction and estimation of Gross Receipts and the calculation of Percentage Rent due.

respect to any environmental conditions existing on the Premises as of the Effective Date.

15.4.1.4 California Civil Code Section 1542 provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

By initialing this paragraph, Lessee acknowledges that it has read, is familiar with, and waives the provisions of California Civil Code §1542 set forth above, and agrees to all of the provisions of subsection 15.4.1.3 above.



Lessee's Initials

15.4.2 **Right of Offset.** Lessee acknowledges that the rent provided for in this Lease has been agreed upon in light of Lessee's construction, maintenance and repair obligations set forth herein, and, notwithstanding anything to the contrary provided in this Lease or by applicable law, Lessee hereby waives any and all rights, if any, to make repairs at the expense of County and to deduct or offset the cost thereof from the Annual Minimum Rent, Monthly Minimum Rent, Percentage Rent or any other sums due County hereunder.

15.5 **Holding Over.** If Lessee holds over after the expiration of the Term for any cause, with or without the express or implied consent of County, such holding over shall be deemed to be a tenancy from month-to-month only, and shall not constitute a renewal or extension of the Term. During any such holdover period, the Minimum Monthly Rent and Percentage Rent rates in effect at the end of the Term shall be increased to one hundred twenty-five percent (125%) of such previously effective amounts. Such holdover shall otherwise be subject to the same terms, conditions, restrictions and provisions as herein contained. Such holding over shall include any time employed by Lessee to remove machines, appliances and other equipment during the time periods herein provided for such removal.

Nothing contained herein shall be construed as consent by County to any holding over by Lessee, and County expressly reserves the right to require Lessee to surrender possession of the Premises to County as provided in this Lease upon the expiration or other termination of this Lease. The provisions of this Section 15.5 shall not be deemed to limit or constitute a waiver of any other rights or remedies of County provided at law or in equity. If Lessee fails to surrender the Premises upon the termination or expiration of this Lease, in addition to any other liabilities to County accruing therefrom, Lessee shall protect, defend, indemnify and hold County harmless from all losses, costs (including reasonable attorneys' fees), damages, claims and liabilities resulting from such failure, including, without limitation, any claims made by any succeeding tenant arising from such failure to surrender, and any lost profits to County resulting therefrom,

CT Corporation, which is authorized to accept service; giving his or its name, residence, and business address, as the agent of Lessee for the service of process in any court action between Lessee and County, arising out of or based upon this Lease, and the delivery to such agent of written notice or a copy of any process in such action shall constitute a valid service upon Lessee.

If for any reason service of such process upon such agent is not possible, then any officer of Lessee may be personally served with such process outside of the State of California and such service shall constitute valid service upon Lessee; and it is further expressly agreed that Lessee is amenable to such process and submits to the jurisdiction of the court so acquired and waives any and all objection and protest thereto.

Written notice addressed to Lessee at the addresses below-described, or to such other address that Lessee may in writing file with Director, shall be deemed sufficient if said notice is delivered personally, by telecopy or facsimile transmission or, provided in all cases there is a return receipt requested (or other similar evidence of delivery by overnight delivery service) and postage or other delivery charges prepaid, by registered or certified mail posted in the County of Los Angeles, California, Federal Express or DHL, or such other services as Lessee and County may mutually agree upon from time to time. Each notice shall be deemed received and the time period for which a response to any such notice must be given or any action taken with respect thereto (including cure of any prospective Event of Default) shall commence to run from the date of actual receipt of the notice by the addressee thereof in the case of personal delivery, telecopy or facsimile transmission if before 5:00 p.m. on regular business days, or upon the expiration of the third (3rd) business day after such notice is sent from within Los Angeles County in the case of such registered or certified mail as authorized in this Section.

Copies of any written notice to Lessee shall also be simultaneously mailed to any Encumbrance Holder, Major Sublessee or encumbrancer of such Major Sublessee of which County has been given written notice and an address for service. Notice given to Lessee as provided for herein shall be effective as to Lessee notwithstanding the failure to send a copy to such Encumbrance Holder, Major Sublessee or encumbrancer.

As of the date of execution hereof, the persons authorized to receive notice on behalf of County and Lessee are as follows:

COUNTY: Director
Department of Beaches and Harbors
Los Angeles County
13837 Fiji Way
Marina del Rey, California 90292
Phone: 310/305-9522
Fax: 310/821-6345

With a Copy to: Office of County Counsel
Los Angeles County
500 West Temple Street
Los Angeles, California 90012

County has been notified in writing, unless the consent of such Encumbrance Holder is obtained with respect to such amendment.

15.15 Time For Director Approvals. Except where a different time period is specifically provided for in this Lease, whenever in this Lease the approval of Director is required, approval shall be deemed not given unless within thirty (30) days after the date of the receipt of the written request for approval from Lessee, Director either (a) approves such request in writing, or (b) notifies Lessee that it is not reasonably possible to complete such review within the thirty (30)-day period, provides a final date for approval or disapproval by Director (the "Extended Time") and approves such request in writing prior to such Extended Time. If Director does not approve such request in writing within such Extended Time, the request shall be deemed to be disapproved. If Director disapproves a matter that requires its approval under this Lease, then Director shall notify Lessee in writing of the reason or reasons for such disapproval.

15.16 Time For County Action. Notwithstanding anything to the contrary contained in this Lease, wherever Director determines that a County action required hereunder necessitates approval from or a vote of one or more of County's boards or commissions or County's Board of Supervisors, the time period for County performance of such action shall be extended as is reasonably necessary in order to secure such approval or vote, and County shall not be deemed to be in default hereunder in the event that it fails to perform such action within the time periods otherwise set forth herein.

15.17 Estoppel Certificates. Each party agrees to execute, within ten (10) business days after the receipt of a written request therefor from the other party, a certificate stating: (i) that this Lease is in full force and effect and is unmodified (or stating otherwise, if true); (ii) that, to the best knowledge of such party, the other party is not then in default under the terms of this Lease (or stating the grounds for default if such be the case); and (iii) if requested, the amount of the Security Deposit, Annual Minimum Rent, Percentage Rent and other material economic terms and conditions of this Lease. Prospective purchasers, Major Sublessees and lenders may rely on such statements.

15.18 Indemnity Obligations. Whenever in this Lease there is an obligation to indemnify, hold harmless and/or defend, irrespective of whether or not the obligation so specifies, it shall include the obligation to defend and pay reasonable attorney's fees, reasonable expert fees and court costs.

15.19 Controlled Prices. Lessee shall at all times maintain a complete list or schedule of the prices charged for all goods or services, or combinations thereof, supplied to the public on or from the Premises, whether the same are supplied by Lessee or by its Sublessees, assignees, concessionaires, permittees or licensees. Said prices shall be fair and reasonable, based upon the following two (2) considerations: first, that the property herein demised is intended to serve a public use and to provide needed facilities to the public at fair and reasonable cost; and second, that Lessee is entitled to a fair and reasonable return upon his investment pursuant to this Lease. In the event that Director notifies Lessee that any of said prices are not fair and reasonable, Lessee shall have the right to confer with Director and to justify said prices. If, after reasonable conference and consultation, Director shall determine that any of said prices are not fair and reasonable, the same shall be modified by Lessee or its Sublessees, assignees, concessionaires,

System. Lessee shall maintain the filtration system in good working order. Lessee shall make no material alterations or modifications to the filtration system without the approval of County, which approval shall not be unreasonably withheld or delayed.

Certain portions of the County Storm Drain System, including without limitation, the catch basin and storm drain cover, are located in an area designated for emergency vehicle response to the Premises. As part of the Redevelopment Work, Lessee shall install all upgrades to the County Storm Drain System required to structurally support or otherwise accommodate emergency vehicle ingress and egress over and around the County Storm Drain System. Such upgrades shall be installed in accordance with plans and specifications approved by County. Lessee shall be responsible for the repair of any damage to the County Storm Drain System incurred in connection with the performance by Lessee of the Redevelopment Work, including without limitation, construction of the structural upgrades described above or the installation of the Storm Drain Equipment (as defined below) or connection thereof to the County Storm Drain System. During the Term of the Lease, Lessee shall be responsible for all required maintenance, repair or replacement of (a) all pipes, valves, connections and other facilities and equipment from the Premises, including without limitation the filtration system installed by Lessee as provided above (the "Premises Storm Drain Equipment") to and including the point of connection to the County Storm Drain System, arising from, incurred in connection with, or necessitated by, any cause, occurrence or condition whatsoever and (b) any and all portions of the County Storm Drain System, to the extent arising from, incurred in connection with, or necessitated by, (i) access over or around the County Storm Drain System by emergency response vehicles serving the Premises, or (ii) Lessee's alteration, modification, maintenance or repair of any portion of the County Storm Drain System as a result of the initial structural improvements by Lessee to the County Storm Drain System; provided, however, that Lessee's obligations under clauses (a) and (b) above shall not be applicable to the extent of the negligence or willful misconduct of County or any defects in the County Storm Drain System existing as of the commencement of the Redevelopment Work. All maintenance or repair work with respect to the County Storm Drain System for which Lessee is responsible shall, at County's option, be performed either by (x) Lessee, at Lessee's cost, in accordance with plans, specifications, procedures and other requirements imposed by County, or (y) County, at Lessee's cost, provided, however, that Lessee and County shall cooperate to minimize all costs associated with such work.

If County is ordered by the California Coastal Commission to discontinue use of the County Storm Drain System or if use of the County Storm Drain System is discontinued for health, safety or environmental reasons or to comply with Applicable Law, then County shall provide Lessee with written notice of the scheduled date that the County Storm Drain System

16.1 **Selection of Arbitrator.** The parties shall attempt to agree upon an arbitrator who shall decide the matter. If, for any reason, the parties are unable to agree upon the arbitrator within ten (10) days of the date the Initiating Party serves a request for arbitration on the Responding Party, then at any time on or after such date either party may petition for the appointment of the arbitrator as provided in California Code of Civil Procedure Section 1281.6.

16.2 **Arbitrator.** The arbitrator shall be a retired judge of the California Superior Court, Court of Appeal or Supreme Court, or any United States District Court or Court of Appeals located within the State, who has agreed to resolve civil disputes.

16.3 **Scope of Arbitration.** County and Lessee affirm that the mutual objective of such arbitration is to resolve the dispute as expeditiously as possible. The arbitration process shall not apply or be used to determine issues other than (i) those presented to the arbitrator by the Initiating Party provided those disputes are arbitrable disputes pursuant to this Lease, (ii) Additional Disputes presented to the arbitrator by the Responding Party, provided that any such Additional Disputes constitute arbitrable disputes pursuant to this Lease and (iii) such related preliminary or procedural issues as are necessary to resolve (i) and/or (ii) above. The arbitrator shall render an award. Either party may, at its sole cost and expense, request a statement of decision explaining the arbitrator's reasoning which shall be in such detail as the arbitrator may determine. Unless otherwise expressly agreed by the parties in writing, the award shall be made by the arbitrator no later than the sooner of six (6) months after the date on which the arbitrator is selected by mutual agreement or court order, whichever is applicable, or five (5) months after the date of a denial of a petition to disqualify a potential arbitrator for cause. County and Lessee hereby instruct the arbitrator to take any and all actions deemed reasonably necessary, appropriate or prudent to ensure the issuance of an award within such period. Notwithstanding the foregoing, failure to complete the arbitration process within such period shall not render such arbitration or any determination made therein void or voidable; however, at any time after the expiration of the foregoing five (5) or six (6) month periods, as applicable, either party may deliver written notice to the arbitrator and the other party either terminating the arbitration or declaring such party's intent to terminate the arbitration if the award is not issued within a specified number of days after delivery of such notice. If the arbitrator's award is not issued prior to the expiration of said specified period, the arbitration shall be terminated and the parties shall recommence arbitration proceedings pursuant to this Article 16.

16.4 **Immunity.** The parties hereto agree that the arbitrator shall have the immunity of a judicial officer from civil liability when acting in the capacity of arbitrator pursuant to this Lease.

16.5 **Section 1282.2.** The provisions of Code of Civil Procedure § 1282.2 shall apply to the arbitration proceedings except to the extent they are inconsistent with the following:

- (1) Unless the parties otherwise agree, the arbitrator shall appoint a time and place for the hearing and shall cause notice thereof to be served as provided in said § 1282.2 not less than ninety (90) days before the hearing, regardless of the aggregate amount in controversy.

(e) Witnesses or documents to be used solely for impeachment of a witness need not be identified or produced.

(4) The arbitrator is not bound by the rules of evidence, but may not consider any evidence not presented at the hearing. The arbitrator may exclude evidence for any reason a court may exclude evidence or as provided in this Lease.

16.6 **Statements of Position.** The Statement of Position to be delivered by Section 16.5 shall comply with the following requirements:

(1) Where the dispute involves rent to be charged, market values, insurance levels or other monetary amounts, the Statements of Position shall numerically set forth the existing minimum rent, percentage rent, market value, insurance level and/or other monetary amounts in dispute, the party's proposed new minimum rent, percentage rent, market value, insurance level and/or other monetary amounts, and shall additionally set forth the facts supporting such party's position.

(2) If the dispute relates to Improvement Costs, the Statements of Position shall set forth the facts supporting such party's position and the amount of each cost which the party believes should be allowed or disallowed.

16.7 **Written Appraisal Evidence.** Neither party may, at any time during the proceedings, introduce any written report which expresses an opinion regarding Fair Market Rental Value or the fair market value of the Premises, or any portion thereof, ("**Written Appraisal Evidence**") unless such Written Appraisal Evidence substantially complies with the following standards: it shall describe the Premises; identify the uses permitted thereon; describe or take into consideration the terms, conditions and restrictions of this Lease; correlate the appraisal method(s) applied; discuss the relevant factors and data considered; review rentals paid by lessees in Marina del Rey and other marina locations within Southern California who are authorized to conduct similar activities on comparable leaseholds; and, describe the technique of analysis, limiting conditions and computations that were used in the formulation of the valuation opinion expressed. With respect to disputes regarding Fair Market Rental Value, such Written Appraisal Evidence shall express an opinion regarding the fair market rental value of the Premises as prescribed by Section 4.3.1. Written Appraisal Evidence in connection with disputes arising out of Article 6 of this Lease shall predicate any valuation conclusions contained therein on the Income Approach. Written Appraisal Evidence shall in all other respects be in material conformity and subject to the requirements of the Code of Professional Ethics and the Standards of Professional Practice of The Appraisal Institute or any successor entity.

16.8 **Evidence.** The provisions of Code of Civil Procedure § 1282.2(a)(2)(E) shall not apply to the arbitration proceeding. The arbitrator shall have no discretion to allow a party to introduce witnesses, documents or Written Appraisal Evidence (other than impeachment testimony) unless such information was previously delivered to the other party in accordance with Section 16.5 and, in the case of Written Appraisal Evidence, substantially complies with the requirements of Section 16.7, or such evidence consists of a transcript of a deposition of an expert witness conducted pursuant to Section 16.9. Notwithstanding the foregoing, the arbitrator may allow a party to introduce evidence which, in the exercise of reasonable diligence, could not

16.11 **Powers of Arbitrator.** In rendering the award, the arbitrator shall have the power to consult or examine experts or authorities not disclosed by a party pursuant to Section 16.5(2) hereof; provided that each party is afforded the right to cross-examine such expert or rebut such authority.

16.12 **Costs of Arbitration.** Lessee and County shall equally share the expenses and fees of the arbitrator, together with other expenses of arbitration incurred or approved by the arbitrator. Failure of either party to pay its share of expenses and fees constitutes a material breach of such party's obligations hereunder.

16.13 **Amendment to Implement Judgment.** Within seven (7) days after the issuance of any award by the arbitrator becomes final, the County will draft a proposed amendment to the Lease setting forth the relevant terms of such award. Within seven (7) days after delivery of a copy of the amendment to Lessee, Lessee will sign the amendment (with any revisions to the proposed amendment necessary to accurately reflect the arbitration award) and return the executed copy to the County, which shall thereafter be executed by County as soon as reasonably practicable.

16.14 **Impact of Gross Error Allegations.** Where either party has charged the arbitrator with Gross Error:

16.14.1 The award shall not be implemented if the party alleging Gross Error obtains a judgment of a court of competent jurisdiction stating that the arbitrator was guilty of Gross Error and vacating the arbitration award ("**Disqualification Judgment**"). In the event of a Disqualification Judgment, the arbitration process shall begin over immediately in accordance with this Section 16.14, which arbitration shall be conducted (with a different arbitrator) as expeditiously as reasonably possible.

16.14.2 The party alleging Gross Error shall have the burden of proof.

16.14.3 For the purposes of this Section 16.14, the term "**Gross Error**" shall mean that the arbitration award is subject to vacation pursuant to California Code of Civil Procedure § 1286.2 or any successor provision.

16.15 **Notice.**

NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

IN WITNESS WHEREOF, County and Lessee have entered into this Lease as of the Effective Date.

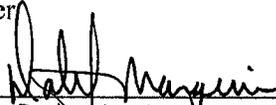
THE COUNTY OF LOS ANGELES

MARINA DEL REY INVESTORS, a California limited partnership

By: _____
Chairman, Board of Supervisors

By: IWF Jamaica Bay, LLC, a California limited liability company, its general partner

By: Invest West Financial Corporation, a California corporation, its sole member

By: 
Name: Dale J. Marquis
Its: Chairman & Chief Financial Officer

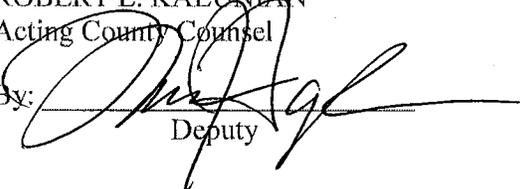
ATTEST:

SACHI A. HAMAI,
Executive Officer of the
Board of Supervisors

By: _____
Deputy

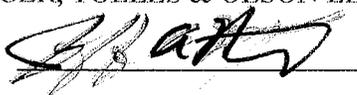
APPROVED AS TO FORM:

ROBERT E. KALUNIAN
Acting County Counsel

By: 
Deputy

APPROVED AS TO FORM:

MUNGER, TOLLES & OLSON LLP

By: 

southeasterly along said northeasterly boundary to a line parallel with and 2 feet southeasterly, measured at right angles, from said radial; thence southwesterly along said last mentioned parallel line 4.00 feet; thence northwesterly at right angles to said last mentioned parallel line to the northerly boundary of said last mentioned parcel; thence easterly and southeasterly along said northerly and northeasterly boundaries to said true point of beginning.

Reserving and excepting therefrom unto the County of Los Angeles a right of way for sanitary sewer and harbor utility purposes over that portion thereof designated on said map as an easement to be reserved by said county for such purposes.

DESCRIPTION APPROVED

February 8, 1967

JOHN A. LAMBIE

County Engineer

By *John A. Lambie* Deputy

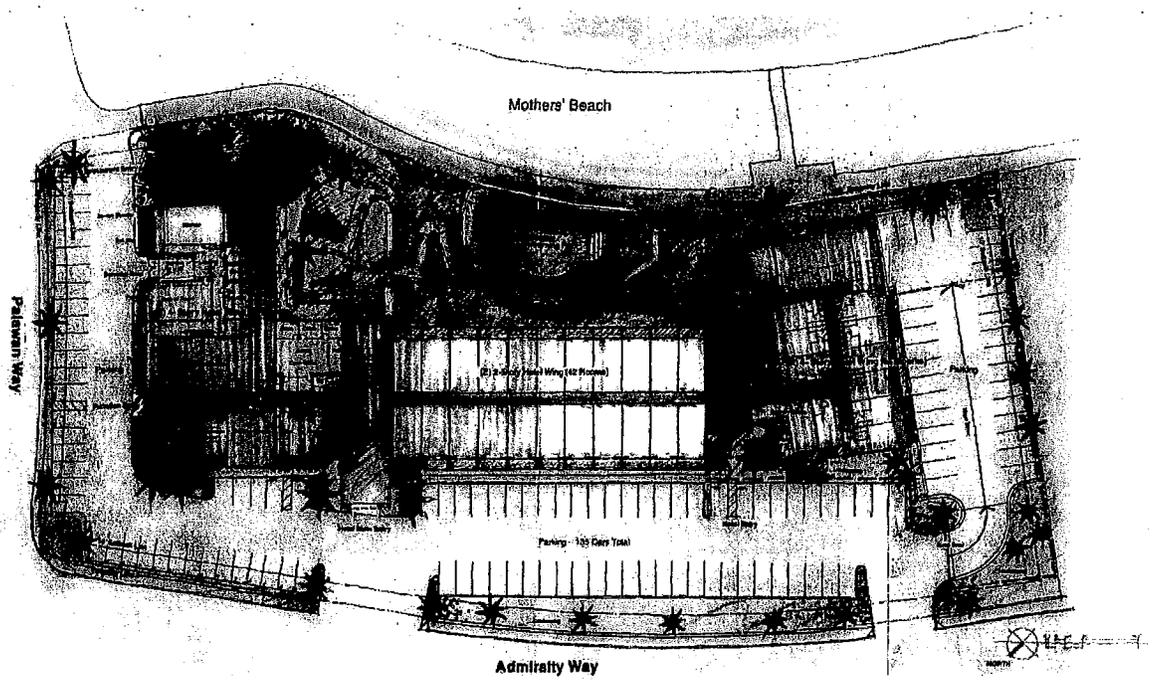
Subject to all reservations set forth in the Lease, including the terms and provisions of Sections 3.8 and 3.9, and the public easement reserved by County in Section 15.20.

| | |
|---|--|
| | <p>The renovation program will include:</p> <ul style="list-style-type: none"> ❑ construction of a new upgraded resort type pool at the center of the property, including a pool deck area, concrete decking and walkways, and public restrooms; ❑ a food and beverage outlet; ❑ new room interiors; ❑ new building facades; and ❑ new interior and exterior common areas. <p>Construction will be implemented in a single phase. Project construction start to completion (date of 1st occupancy) is estimated to be 18 months. Starting with date of term sheet approval, DCB filing within 3 months, DRP filing within 2 months of DCB conceptual approval.</p> |
| <ul style="list-style-type: none"> • Remodeled building exteriors | <p>New building facades and staircases, new parking areas, and restriped parking spaces including required ADA spaces.</p> |
| <ul style="list-style-type: none"> • Remodeled building interiors | <p>Remodeled building interiors, including guest bedroom interiors, guest baths/showers, sinks and faucets and toilets (including ADA handicap grab bars, and toilet seats to extent required).</p> |
| <ul style="list-style-type: none"> • Remodeled interior building common areas | <p>The entire building interior common area will receive a facelift, including the main lobby, hallways, entryways, waiting & meeting areas, lounges, staircases, walkways, restrooms, elevators, sitting areas, phone/communication areas, community rooms, service counters and necessary lighting and illumination. New facility to be fully ADA compliant . All surfaces will either be coated with a fresh updated paint scheme or covered with appropriate wall covering. Interior furnishings such as sofas, chairs, lamps, tables shall be replaced.</p> |

| | |
|---|---|
| b) Marina | |
| <ul style="list-style-type: none"> • Replacement of docks and slips, including design and materials | Not applicable (no water area). |
| <ul style="list-style-type: none"> • Retention of existing slip count, including slip count before and after by slip size | Not applicable (no water area). |
| <ul style="list-style-type: none"> • Retention of marine commercial facilities, including area count before and after for each category | Not applicable (no marine commercial facilities). |

| | |
|--|--|
| | |
| d) Signage | |
| <ul style="list-style-type: none">• New signage program | The development of this parcel shall include a distinct signage package that will include monument signage and directional signage for the guests and appropriate signage for building identification. |

Exhibit A-1
Jamaica Bay Inn – Site Plan



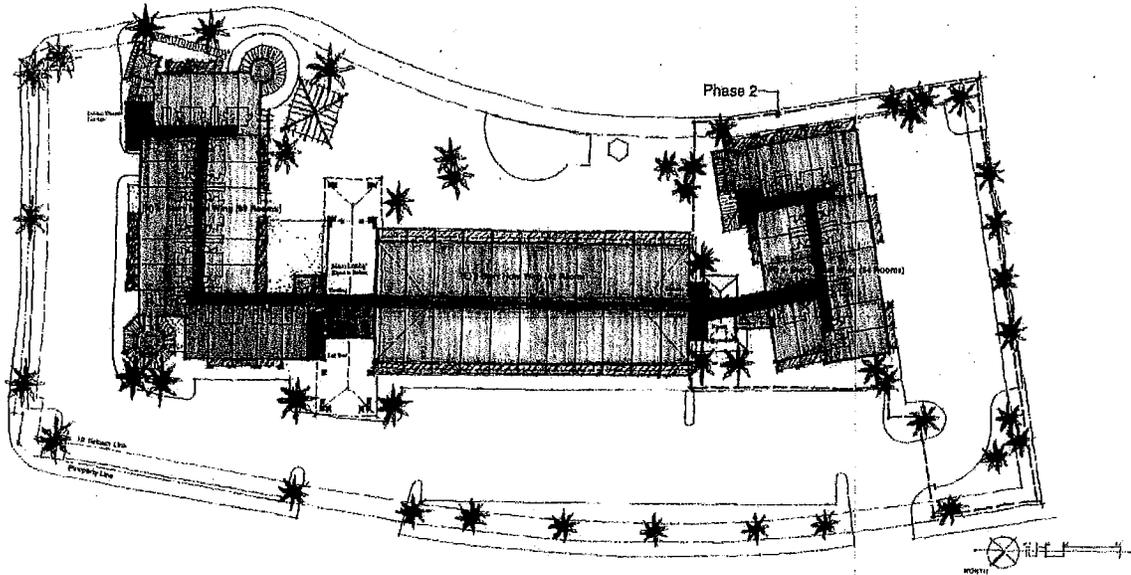
Site Plan

Jamaica Bay Inn
MARINA DEL REY CALIFORNIA

08.22.03

Exhibit A-1

Exhibit A-3
Jamaica Bay Inn – Second Floor Plan



Second Floor Plan

Jamaica Bay Inn
MARINA DEL REY CALIFORNIA

08.22.03

Linquist-Craig

indirect transfers of interests in the entity or the Lease as required under the Lease (excluding any Excluded Transfer); provided however, that a transfer of ownership of a publicly held parent corporation of Lessee that is not done primarily as a transfer of this leasehold will not be subject to County approval.

6. The terms of the proposed assignment will not detrimentally affect the efficient operation or management of the leasehold, the Premises or any Improvements thereon.
7. The proposed transferee does not have interests which, when aggregated with all other interests granted by County to such transferee, would violate any policy formally adopted by County restricting the economic concentration of interests granted in the Marina del Rey area, which is uniformly applicable to all Marina del Rey lessees.
8. The transfer otherwise complies with the terms of all ordinances, policies and/or other statements of objectives which are formally adopted by County and/or the County Department of Beaches and Harbors and which are uniformly applicable to persons or entities with rights of occupancy in any portion of Marina del Rey.

1. This grant authorizes a **Coastal Development Permit (CDP 200500006)** for the renovation and expansion of the existing hotel, including 69 additional guest rooms (total of 111 guest rooms), an expanded and renovated restaurant, outdoor dining, new swimming pool and spa, patio, demolition of the existing one-story hotel building section and replacement with a four-story hotel building section, demolition of an existing one-story accessory building, new landscaping plan, parking and authorizes a **Conditional Use Permit (CUP 200500233)** for the sale of a full-line of alcoholic beverages for on-site consumption in association with a hotel, restaurant, patio café, and hotel accessory uses on Parcel 27 in Marina del Rey, in substantial compliance with the approved Exhibit "A," and subject to all of the following conditions:
 - a. The Permittee shall submit, to the County of Los Angeles, an in-lieu fee payment for on-site affordable accommodations in the amount of **\$90,321**. These fees shall be placed in a separate interest bearing trust account, pursuant to Sections 22.46.1180 (A) (16) (b) and 22.46.1190 (A) (8) (b) of the county code. This account shall be administered by Los Angeles County and/or its designees, according to said section(s) of the county code, and may be adjusted pursuant to consumer price index changes in subsequent years;
 - b. The Permittee shall submit, to the County of Los Angeles, a Youth Hostel Fund fee payment in the amount of **\$9,032**. These fees shall be placed in an interest bearing trust account and shall only be expended pursuant to Sec. 22.46.1960 (E) of the county code. This account shall be administered by Los Angeles County and/or its designees, according to said section(s) of the county code, and may be adjusted pursuant to consumer price index changes in subsequent years;
 - c. The permittee shall maintain a minimum of 161 on-site automobile parking spaces. No more than 63 spaces may be compact;
 - d. At least four bicycle parking spaces shall be maintained in close proximity and convenient to the hotel entrance. The bicycle parking spaces shall be a stand or other device constructed so as to enable the user to secure by locking the frame and one wheel of each bicycle parked therein. Racks must be easily usable with both U-locks and cable locks. Racks should support the bikes in a stable upright position so that a bike, if bumped, will not fall or roll down. Racks that support a bike primarily by a wheel, such as standard 'wire racks' are damaging to wheels and thus are not acceptable; and
 - e. The project shall dedicate the necessary right-of-way along Admiralty Way for the future widening of Admiralty Way, associated with the Admiralty Way Widening project and the Admiralty Way / Via Marina Reconfiguration project, as specified by the Department of Public Works.
2. Prior to the issuance of any building permits for the project, the permittee shall record said Covenant and Agreement in the office of the County Recorder. The permittee shall, prior to recordation in the Office of the County Recorder, submit a copy to County Counsel of the Department of Regional Planning, the Department of Beaches and Harbors for review and approval.
3. Unless otherwise apparent from the context, the term "permittee" shall include the applicant

after such date, a Director's Review application shall be filed with the Department of Regional Planning. The application shall be a request for continuance of the use permitted under this grant, whether including or not including any modification to the use at that time.

This grant may, at the discretion of the Director, be approved to continue for an additional ten (10) year period, with a Director's Review.

14. Entitlement to the use of the property thereafter shall be subject to the regulations then in effect. At least six (6) months prior to the expiration of this permit and in the event that the Permittee intends to continue operations after such date, a new Conditional Use Permit and Coastal Development Permit application shall be filed with the Department of Regional Planning. The application shall be a request for a continuance of the use permitted under this grant, whether including or not including modification to the use at that time.
15. The subject property shall be maintained and operated in full compliance with the conditions of this grant and any law, statute, ordinance, or other regulation applicable to any development or activity on the subject property. Failure of the permittee to cease any development or activity not in full compliance shall be a violation of these conditions. The permittee shall deposit with the County of Los Angeles the sum of \$3,000.00. These monies shall be placed in a performance fund which shall be used exclusively to compensate the Department of Regional Planning for all expenses incurred while inspecting the premises to determine the permittee's compliance with the conditions of approval. The fund provides for twenty (20) annual inspections. Inspections shall be unannounced.
16. The subject property shall be maintained and operated in full compliance with the conditions of this grant and any law, statute, ordinance, or other regulation applicable to any development or activity on the subject property. Failure of the permittee to cease any development or activity not in full compliance shall be a violation of these conditions.
17. If additional inspections are required to ensure compliance with the conditions of this grant, or if any inspection discloses that the subject property is being used in violation of any condition of this grant, the permittee shall be financially responsible and shall reimburse the Department of Regional Planning for all additional inspections and for any enforcement efforts reasonably necessary to bring the subject property into compliance. Inspections shall be made to ensure compliance with the conditions of this grant as well as adherence to development in accordance with the site plan on file. The amount charged for additional inspections shall be \$150.00 per inspection, or the current recovery cost, whichever is greater.
18. Notice is hereby given that any person violating a provision of this grant is guilty of a misdemeanor. Notice is further given that the Regional Planning Commission or a hearing officer may, after conducting a public hearing and giving notice thereof to permittee, revoke or modify this grant, if the Commission or hearing officer finds that these conditions have been violated or that this grant has been exercised so as to be detrimental to the public's health or safety or so as to be a nuisance.
19. Within fifteen (15) days of the approval date of this grant, the permittee shall remit a \$50.00 processing fee payable to the County of Los Angeles in connection with the filing and posting of a Notice of Determination in compliance with Section 21152 of the Public

28. Within ninety (90) days of approval of this grant, the permittee shall submit to the Director for review and approval three copies of revised plans, similar to Exhibit "A" as presented at the public hearing that clearly depicts all required project changes. The property shall be developed and maintained in substantial conformance with the approved revised Exhibit "A". All revised plot plans must be accompanied by the written authorization of the property owner.
29. Within ninety (90) days of approval of this grant, the permittee shall submit to the Director for review and approval three copies of a landscape plan, which may be incorporated into the Revised Exhibit "A" described in Condition No. 28. The landscape plan shall show the size, type, and location of all plants, trees, and watering facilities. The permittee shall maintain all landscaping in a neat, clean and healthful condition, including proper pruning, weeding, removal of litter, fertilizing and replacement of plants when necessary for the life of this grant.
30. Within ninety (90) days of approval of this grant, the permittee shall submit to the Director of Planning and Director of Beaches and Harbors for review and approval three copies of a signage plan, including elevations, proposed lettering, colors, and locations of signage on the subject property, which may be incorporated into the Revised Exhibit "A" described in Condition No. 28. All renderings of said signage shall be drawn to scale and shall be in conformity with those approved by the Design Control Board.
31. The permittee shall, to the satisfaction of the Director of Regional Planning, participate in, and contribute a fair share to, funding the mitigation measures described in the Coastal Improvement Fund as specified in Section 22.46.1950 (Coastal Improvement Fund) of Los Angeles County Code.
32. The permittee shall prepare a Fire Safety Plan in accordance with Section 22.46.1180 (15) of the zoning code and obtain approval of the Fire Department prior to issuance of any building permits.
33. Upon receipt of this letter, the permittee shall contact the Fire Prevention Bureau of the Los Angeles County Fire Department to determine what facilities may be necessary to protect property the property from fire hazard. The permittee shall provide fire flow, hydrants, gated access width, emergency access, and any other facilities as may be required by said Department.
34. The applicant shall provide fire sprinklers in all structures in accordance with Los Angeles County Building Code, Chapter 38, Sections 3802(b) 5 and 3802 (h) to the satisfaction of the Fire Department.
35. The following conditions shall apply to project construction activities:
 - a. Construction activity shall be restricted between the hours of 7:00 a.m. to 7:00 p.m., Monday through Friday and between the hours of 8:00 a.m. to 5:00 p.m. on Saturday. No construction shall occur on Sundays and legal holidays;
 - b. Pile driving shall be restricted to the hours between 8:00 a.m. to 5:00 p.m.,

- any construction activities. The schedule shall also include information where individuals may register questions, concerns or complaints regarding noise issues. The permittee shall take appropriate action to minimize any reported noise problems;
- g. All project-related truck hauling shall be restricted to a route approved by the Director of Public Works, a map of which shall be provided to the Director upon approval. The permittee shall post a notice at the construction site and along the proposed truck haul route. The notice shall contain information on the type of project, anticipated duration of construction activity, and provide a phone number where people can register questions and complaints. The permittee shall keep record of all complaints and take appropriate action to minimize noise generated by the offending activity where feasible. A monthly log of noise complaints shall be maintained by the permittee and submitted to the County of Los Angeles Department of Health Services;
 - h. The permittee shall develop and implement a construction management plan, as approved by the Director of Planning and the Director of Public Works, which includes all of the following measures as recommended by the South Coast Air Quality Management District (SCAQMD), or other measures of equivalent effectiveness approved by the SCAQMD:
 - i. Configure construction parking to minimize traffic interference;
 - j. Provide temporary traffic controls during all phases of construction activities to maintain traffic flow (e.g., flag person) as needed;
 - k. Schedule construction activities that affect traffic flow on the arterial system to off-peak hours to the degree practicable as determined by the Director of Public Works;
 - l. Consolidate truck deliveries when possible;
 - m. Provide dedicated turn lanes for movement of construction trucks and equipment on- and off-site;
 - n. Suspend use of all construction equipment operations during second stage smog alerts. Contact the SCAQMD for daily forecasts;
 - o. Use electricity from power poles rather than temporary diesel- or gasoline-powered generators, except as approved by the Director;
 - p. Use methanol- or natural gas-powered mobile equipment and pile drivers instead of diesel if readily available at competitive prices; and
 - q. Use propane- or butane-powered on-site mobile equipment instead of gasoline if readily available at competitive prices.
 - r. The permittee shall develop and implement a dust control plan, as approved by

40. All conditions shall be binding on all lessees and sub-lessees of Parcel 27.

Attachment: Mitigation Monitoring Program

RJF:PE
8-8-07

EXHIBIT F

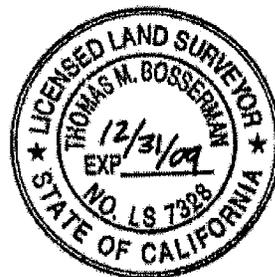
DEDICATION AREA

THAT PORTION OF PARCEL 391 AND PARCELS 397 THRU 401, INCLUSIVE, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS SHOWN ON LOS ANGELES COUNTY ASSESSOR'S MAP NO. 88, RECORDED IN BOOK 1, PAGES 53 TO 70, INCLUSIVE, OF ASSESSOR'S MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST WESTERLY CORNER OF SAID PARCEL 401, THENCE NORTHEASTERLY ALONG THE NORTHWESTERLY LINES OF SAID PARCELS 401, 400, 399 AND 398 TO THE BEGINNING OF A CURVE CONCAVE SOUTHERLY, SAID CURVE BEING THE MOST NORTHERLY LINE OF SAID PARCEL 398 AND SHOWN ON SAID LOS ANGELES COUNTY ASSESSOR'S MAP NO. 88 AS HAVING A RADIUS OF 15 FEET AND A LENGTH OF 22.77 FEET; THENCE NORTHEASTERLY, EASTERLY AND SOUTHEASTERLY ALONG SAID CURVE TO IT'S ENDING AS SHOWN ON SAID MAP; THENCE CONTINUING SOUTHEASTERLY ALONG THE NORTHEASTERLY LINES OF SAID PARCELS 398, 397 AND 391 TO A POINT ON A TANGENT CURVE, HEREINAFTER KNOWN AS "CURVE A", CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 20 FEET, A RADIAL LINE TO SAID POINT BEARS NORTH 39° 27' 11" EAST; SAID "CURVE A" BEING TANGENT TO THE SOUTHEASTERLY LINE OF THE NORTHWESTERLY 30 FEET OF SAID PARCEL 391; THENCE LEAVING SAID NORTHEASTERLY LINE OF PARCEL 391, AND CONTINUING SOUTHEASTERLY ALONG SAID "CURVE A" AN ARC DISTANCE OF 9.38 FEET THROUGH A CENTRAL ANGLE OF 26° 52' 34" TO A POINT ON A NON-TANGENT CURVE, HEREINAFTER KNOWN AS "CURVE B", CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 1029.20 FEET AND BEING CONCENTRIC WITH AND DISTANT 2.20 FEET SOUTHWESTERLY FROM SAID NORTHEASTERLY LINES OF SAID PARCELS 391, 397 AND 398, A RADIAL LINE TO SAID POINT BEARS SOUTH 38° 56' 59" WEST; THENCE NORTHWESTERLY ALONG SAID "CURVE B" AN ARC DISTANCE OF 179.29 FEET THROUGH A CENTRAL ANGLE OF 09° 58' 52" TO A POINT ON A NON-TANGENT LINE, HEREINAFTER KNOWN SAID "LINE A", HAVING A BEARING OF NORTH 84° 59' 04" WEST; THENCE ALONG SAID "LINE A", NORTH 84° 59' 04" WEST, 38.88 FEET TO A POINT ON A LINE, HEREINAFTER KNOWN AS "LINE B", HAVING A BEARING OF SOUTH 52° 42' 36" WEST; THENCE ALONG SAID "LINE B", SOUTH 52° 42' 36" WEST, 149.27 FEET TO A POINT ON A LINE,

09' 34" TO A POINT ON A NON-TANGENT CURVE, HEREINAFTER KNOWN AS "CURVE I", CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 921.50 FEET, A RADIAL LINE TO SAID POINT BEARS NORTH 12° 12' 25" WEST; THENCE SOUTHWESTERLY ALONG SAID "CURVE I" AN ARC DISTANCE OF 6.42 FEET THROUGH A CENTRAL ANGLE OF 00° 23' 57" TO A POINT ON A NON-TANGENT CURVE, HEREINAFTER KNOWN AS "CURVE J", CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 927.00 FEET, A RADIAL LINE TO SAID POINT BEARS NORTH 57° 38' 04" WEST; THENCE SOUTHWESTERLY ALONG SAID "CURVE J" AN ARC DISTANCE OF 21.50 FEET THROUGH A CENTRAL ANGLE OF 01° 19' 43" TO A POINT ON THE SOUTHWESTERLY LINE OF SAID PARCEL 401, SAID POINT BEING DISTANT SOUTH 55° 08' 23" EAST, 12.00 FEET FROM THE MOST NORTHERLY CORNER OF SAID PARCEL 401 MEASURED ALONG SAID SOUTHWESTERLY LINE; SAID MOST NORTHERLY CORNER BEING THE POINT OF BEGINNING; THENCE ALONG SAID SOUTHWESTERLY LINE, NORTH 55° 08' 23" WEST, 12.00 FEET TO THE POINT OF BEGINNING.

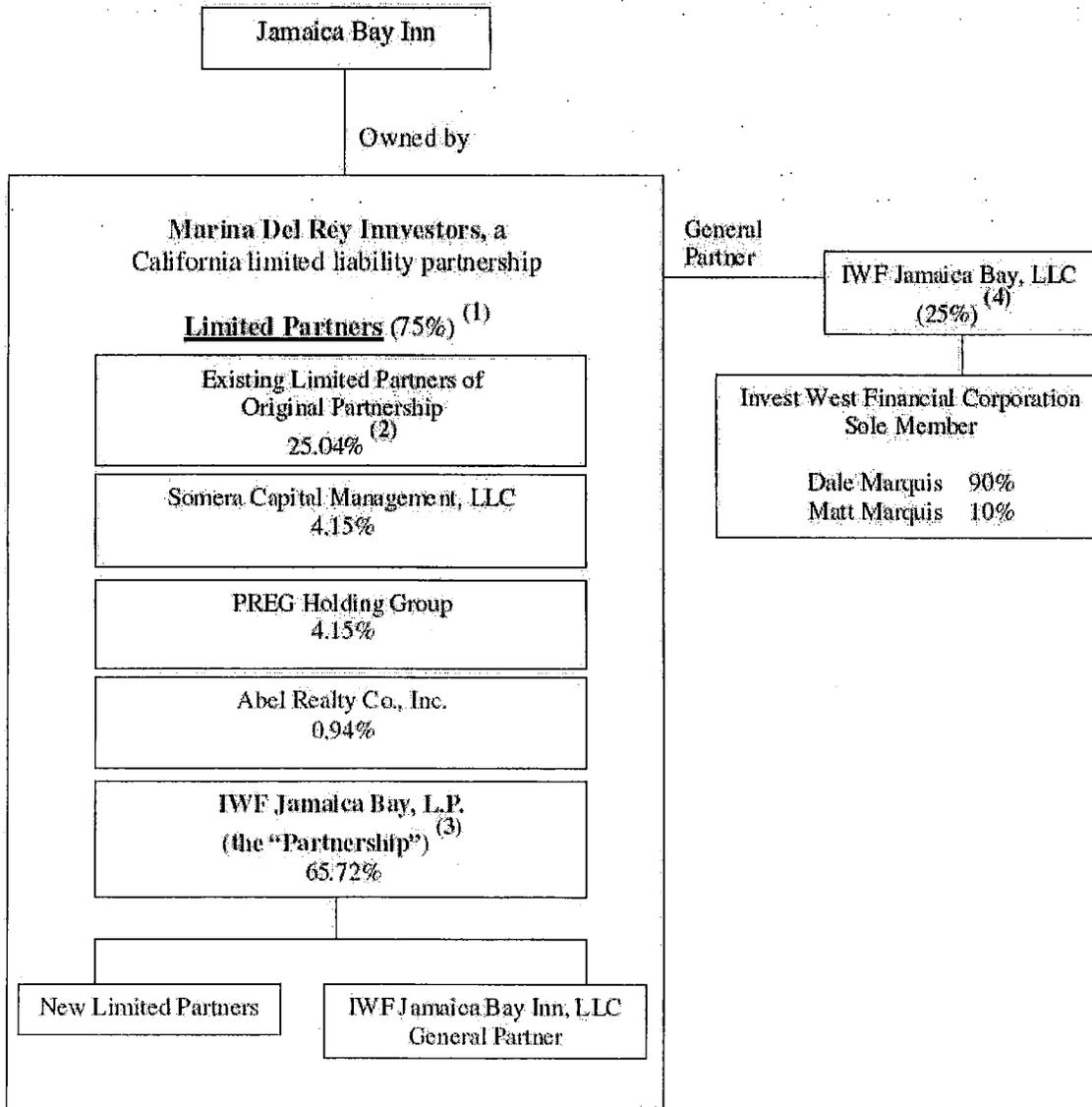
THIS LEGAL DESCRIPTION WAS PREPARED
UNDER MY DIRECT SUPERVISION.



Thomas M. Bosserman 5/12/09
THOMAS M. BOSSERMAN DATE
P.L.S. 7328 EXP. 12/31/09

EXHIBIT G

LESSEE'S OWNERSHIP STRUCTURE



- (1) The percentages listed below are the individual percentage interests of the total limited partners' percentage interest of 75%
- (2) Listed on Schedule I
- (3) The only partner of IWF Jamaica Bay, L.P. that owns a greater than 5% beneficial interest in Lessee is Shupe Revocable Trust (17.51% of the total limited partner interest)
- (4) The General Partner's 25% interest is subordinated to the return to the Limited Partner of 100% of their capital contributions. Until that occurs, the Limited Partner's percentage interest is 100% and the General Partner's interest is 0%.

| | | |
|--|--|---------|
| Gerald Bruver Trust | 8160 Gould Avenue Los Angeles, CA 90046 | 0.1703% |
| Gladys Lyons Revocable Trust | 5614 Gray Feather Court Westlake Village, CA 91362 | 0.3407% |
| Goldfarb and Fleece, FBO Steven Shore | 345 Park Avenue New York, NY 10154 | 0.1703% |
| Helene Sullivan Revocable Trust | PO Box 3164 Santa Barbara, CA 93130 | 0.1703% |
| Howard and Erlinda Marquis | PO Box 1041 Hood River, OR 97031 | 0.1703% |
| Hughes Family Trust Milton and Joyce Hughes, Trustees | 10574 Millerton Road Clovis, CA 93619 | 0.3407% |
| Invest West Financial Corporation | 1933 Cliff Drive, Suite 1 Santa Barbara, CA 93109 | 0.1703% |
| Invest West Redondo | 1933 Cliff Drive, Suite 1 Santa Barbara, CA 93109 | 0.8517% |
| Iris Gelfand | 4702 Park Encino Lane, #226 Encino, CA 91436 | 0.4259% |
| Jaffe Living Trust Michael and Jann Jaffe, Trustees | 12301 Wilshire Blvd., Suite 110 Los Angeles, CA 90025 | 0.5111% |
| JBI Partners | c/o Somera Real Estate Group 115 W. Canon Perdido Street Santa Barbara, CA 93101 | 7.6654% |
| John Hawkes | 412 Calle Alamo Santa Barbara, CA 93105 | 0.1703% |
| John Mangan | 2712 Verde Vista Drive Santa Barbara, CA 93105 | 0.3407% |
| Kima Investments | Kirt Kimball 978 Waterford Drive Provo, UT 84604 | 0.1703% |
| King Harbor, Inc. | c/o Mindy Anderson 23901 Calabasas Road, #1010 Calabasas, CA 91302 | 2.5551% |
| Lavery Exemption Trust Mary Jane Lavery, Trustee | 3492 Wild Lilac Road, #110 Thousand Oaks, CA 91360 | 0.5111% |
| Lavery Non-Exempt Marital Trust Mary Jane Lavery, Trustee | 3492 Wild Lilac Road, #110 Thousand Oaks, CA 91360 | 0.5111% |
| Lloyd Cox Testamentary Trust | Steve Edson, Executor 122 S. Patterson, Suite C-133 Santa Barbara, CA 93111 | 0.3407% |

AMENDED AND RESTATED LEASE AGREEMENT

by and between

County of Los Angeles

and

Marina Del Rey Investors,
a California limited partnership

(Parcel 27R — Lease No. 6573)

Dated as of _____, 2009

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